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Selections.

THE SYRACUSE RESCUE CASE.

THE case of the prisoners charged with the rescue of the alleged slave "Jerry," at Syracuse, has been commenced, as we stated last week, before the U. S. District Court at Albany. No full report of the preliminary proceedings on the motion to quash the indictment has, that we know of, been made, and it would hardly be worth while to republish it in full if it had been. A full understanding of their character, however, may be obtained from the speeches of counsel on both sides, and these we copy below, from the *Albany Journal*. We regret that we can find no report of that of Mr. Sedgwick, but his brother counsel, Mr. Morgan, fully exposes the means resorted to by the Government to secure a conviction in this case.

U. S. District Court—Northern District of New York.

Before His Honour, ALFRED CONKLING, *U. S. District Judge.*

ARGUMENT OF LE ROY MORGAN, ESQ., FOR THE MOTION TO QUASH.

After the Counsel for the Government had finished reading their affidavits, Mr. Morgan rose, and after congratulating the Court, that they had at length arrived at the merits of the matter, proceeded to argue the question which the motion involved.

He remarked that this motion was not made out of any apprehension that the defendants would not succeed on the merits, when brought to a fair trial, but the defendants' counsel could not reconcile it with the duty which they had undertaken, to overlook the glaring irregularities which have taken place in bringing forward these indictments. The Grand Jury is an institution standing between the citizens and the Government, and all those provisions which are designed to secure its purity and impartiality, should be regarded by the Court, when called upon to take notice of their violation.

The motion is made, first. because of certain irregularities in drawing the Grand Jury. and certain irregularities in the proceedings before the Grand Jury.

2nd. Because of the want of any precept or venire to the Marshal, authorizing him to summon them; or of any proper return by the Marshal, showing that they were duly summoned.

The Judge: How does it appear before the Court?

Mr. Morgan: The records of this Court are supposed to be before the Court. If the indictment had been removed into another Court, a certiorari would carry up the venire by which the Grand Jury was summoned as part of the caption to the indictment, and that he was prepared to show by authority that the omission of the venire in the record of the indictment would be fatal even on a motion in arrest of judgment.

To proceed with the grounds of their motion; he would call the attention of the Court, 1st, to the matters outside of the record, and which appear by the affidavits before the Court. These may be regarded as follows—

1. The first ground of objection relates to the designation of the Grand Jury who found these bills of indictment.

2. One of the Grand Jurors was a volunteer, not having been summoned at all by the Deputy Marshal.

3. J. R. Lawrence, Jr. (the son of the District Attorney), was permitted to mix with the Grand Jury, and participate in the proceedings with them.

4. The indictment was found upon the testimony of witnesses, not sworn in this particular case; in fact, on the testimony of witnesses not on oath.

5. The indictment was found on ex-parte affidavits, which were not legal evidence, and which would have been inadmissable before the petit jury.

6. The fact of the ownership of Jerry by Mr. Reynolds, his escape from Missouri into this State, and his *identity*, was proved by papers, not legal evidence. and which could not be read in evidence before the petit jury. This *fact* lays at the foundation of the indictment, and without its being first established by legal testimony, the indictment is without any sufficient testimony to sustain it.

Now as to the first ground of objection, it will be necessary to refer to the acts of Congress, and the laws of this State, in order to establish our propositions.

According to the limitation of the Judge, in Conkling's Treatise, the mode of selecting Grand Jurors as well as petit jurors, is probably embraced in the acts of Congress regulating the *designation* of jurors.

The act of Congress entitled "An act to establish the Judicial Courts of the United States," passed Sept. 24, 1789, contains a very important provision, not only as to the mode of designating jurors, but also the mode in which they are to be summoned and returned by the Marshal. (Read § 29 1 U. S. Statutes at Large, p. 88.)

In 1800 this section was amended in relation to the mode of *designating* jurors. The material part of which amendment required the designation of jurors to be in accordance with the mode of forming juries, *in the highest* Courts of law. The duties of Marshals and their deputies, and the venire clause of 29, still remained untouched. And we have no doubt that *the mode of summoning jurors* is still regulated by that section, although the *mode* of designating jurors has undergone subsequent and further changes. Whether this section applies to Grand Jurors is another question By the act of Congress, amending the act of 1800, passed May 13, 1840, ch. 47, the *qualification of jurors*, was thereafter to be according to the qualification of jurors in the highest Court of law in the State, and were thereafter to be *designated* by ballot, lot or otherwise, according to the mode of forming such juries then practised. and thereafter to be practiced, in such Courts, so far as such mode may be practicable by the Courts of the United States or the officers thereof. (2 U. S. Statutes at Large, p. 46.)

Judge: This is the act under which jurors first began to be drawn in conformity to the State regulations. Previous to that they were summoned.

Mr. Morgan: Yes, sir; and we propose to show that this act was disregarded in this case. If these acts include Grand as well as petit jurors, the same mode of *designating* Grand Jurors in the District Courts of the United States, must now be adopted, as is required in our Courts of Oyer and Terminer, as far as it is practicable.

We propose to show that almost every provision of our State laws, calculated to ensure an impartial jury, has been disregarded in the selection of the Grand Jury which found the bill of indictment. By reference to our Revised Statutes (2 R. S. 721. § 6). the clerk of the county is required to roll up or fold the jury ballots, *each in the same manner, as near as the same may be, so that the name written shall not be visible.*

Now, while it is not to be presumed that any ministerial officer of the United States would *pack* a political jury, from the box of exposed ballots, out of which this Grand Jury was designated, the time may come when the political exigency of some party in power, would induce an unscrupulous deputy to take advantage of such an opportunity to serve his master, by packing juries whose political sympathies would be very likely to ensure indictments (and convictions too) for merely political offences.

The language of the Court in the case of Monroe v. The State of Georgia (5 Georg. 85.) is applicable here.

"No principle or rule of practice tending to ensure *the purity* and *impartiality* of jurors in the *slightest degree*, should be abandoned."

If that rule is applied to this case, it is unnecessary to say that this Buffalo Grand Jury was packed by the Deputy Marshal, as has been generally believed. It is enough that an important provision of our statute was violated, which requires the names of the jurors *not to be visible* to the person who draws the jury. The purity of the institution requires that such an important safeguard should not be abandoned.

By § 10 (2 R. S. 721) the Grand Jurors are to be drawn out of the box *by the County Clerk*, with the assistance of the Sheriff and a County Judge and Justice; and the drawing to be the same in all respects as the drawing of Petit Jurors.

On turning to the provision of the Revised Statutes, (2 R. S. 413) in relation to the drawing of Petit Jurors, it will be seen by section 25 that the Clerk of the County is required to give *six days notice of such drawing, by publication in the newspaper of the County, if there is one.*

There is no pretence that this was done. It is not to be presumed that this *previous* notice can be dispensed with. If it had been given in *this case*, the Deputy Marshal would have had a few more spectators and the District Attorney fewer indictments!

The same section (§ 25) also requires that *three* days notice should also be served upon the first or some other Judge of the County Courts, of the drawing of juries. This was not done. Certainly it is not to be said in answer, that this was *impracticable* in the District Court of the United States. The language of the act of Congress is somewhat too imperative to allow this important pre-requisite to be over-looked by the Marshal.

By § 26 (R. S., p. 414) it is made the duty of the Judge to attend the Clerk's office "*to witness the drawing of such jury.*" Such a witness would be inconvenient, in these rescue cases, if the Deputy Marshal desired to *pack* a jury, which, however, is not charged on him by me. I desire only to speak of the danger of the precedent of dispensing with the presence of witnesses, whom the statutes of this State require to be present at the ceremony.

We also suppose it is *practicable* (in the language of the act of Congress) for the Clerk of the County, instead of the Marshal, "*to shake the box so as to mix the slips of paper on which*" the Jurors drawn are written, as required by section 29 of our statutes. There is an important difference between a jury-box and a dice-box; and these defendants prefer that it should be shaken by the County Clerk instead of the Deputy Marshal. There are such things as *loaded dice*, but we object to *loaded ballots*. I only speak of the precedent of allowing the Marshal *to shake the jury box*, as one not to be tolerated, unless the Clerk of the county, in whose custody the box is, declines to perform that duty himself.

Then, again, by section 29 of the same statute, the County Clerk (not the Marshal) is required to *draw* the jury-ballots out of the box. This is certainly preferable to the mode pursued in these rescue cases; and if the result had not been different, the Deputy of the Marshal would have had some other person to share with him the suspicion of fraud, which this one-sided Buffalo jury so generally excited.

He then alluded to another ground of objection. One of the persons, constituting the Grand Jury, was not summoned by the Marshal, and how many more it is impossible to tell without any return from the Marshal.

In the case of Burr (1 Burr's Trial, 37) Chief Justice Marshall decided that a person substituted in the place of a juror actually summoned, could not be considered as being on the panel: that "the twenty-four first summoned must compose the jury;" that "no one can be on the Grand Jury unless he is one of the twenty-four first summoned" or "one who has been selected from the by-standers by the direction of the Court" to supply deficiences.

It is difficult to admit that a volunteer Grand Jury may institute a criminal prosecution against one of their citizens.

He said he would leave for his associate counsel the discussion of the next ground of objection, viz: the impropriety of admitting young Lawrence into the Grand Jury room.

He next examined the fourth ground of objection, and said there was also another difficulty of a serious nature, growing out of the *form of the oath* administered to the [illegible]

They were sworn to give evidence in the case of "*Moses Summers and others.*" This indictment is not *such* a case; and no indictment for perjury could be predicated on the false testimony which the witnesses gave against Enoch Reed. The witnesses do not take an oath of office to attend the Grand Jury as witnesses in all cases that may be enquired into by that body.

The Foreman of the Grand Jury could not administer the oath as in our State Courts. As long ago as 1801, this State had a law which authorized the Foreman of every Grand Jury to administer the usual oath to witnesses. 1 Laws of N. Y., 358, § 29 (Webster ed., 1802). The English practice, however, prevails in the United States Court, and the witness is sworn in open Court. and a certificate of that fact sent to the Jury (as see Conkling's Treatise). By looking a little further into the English practice, it will appear that the prosecuting officer there always prepares his bill of indictment and endorses the names of the witnesses thereon by whom he expects to prove the charges, before he goes before the Grand Jury. The witnesses thus indorsed, are called and sworn in the following form:

"The evidence you shall give to the Grand Inquest 'upon the bill of indictment against the defendant, 'shall be the truth, the whole truth, and nothing 'but the truth." [1 Chitty, Cr. L. 322.

He could find nothing in Conkling's Treatise or elsewhere, which changes the practice in the United States Courts, and relieves the District Attorney from preparing his indictment beforehand. Such was the course of procedure in Burr's case, and in the late Pennsylvania Treason cases. If this course had been pursued in the rescue cases here, the Clerk of the District Court would have been able to administer the usual oath, and a copy of the indictment would have disclosed to the accused who were the Government witnesses, which he presumed it was the policy of the District Attorney to withhold. It is too much to require the Clerk to frame a form of oath to meet an emergency growing out of such loose practice in the District Attorney's office.

This indictment, (as well as all the others) is, therefore, found without testimony given on oath. To obviate this objection, the District Attorney must be able, at least, to satisfy the Court that he could frame an indictment for perjury in the witness who testified against Enoch Reed, if the testimony was false.

And as to the fifth ground of objection, he said there was some difficulty in procuring evidence on this motion to establish the fact, as clearly as we should like to do (for we have no doubt of it), that most if not all of these indictments were founded upon the evidence contained in the ex-parte affidavits of witnesses, which could not be used before the Petit Jury.

It was stated in Low's case (4 Green 1, 453), by one of the counsel for the defendant, that "it was enough for the citizen to suggest to the Court his grief, resulting from the misprison or improper conduct of its officers, and the Court would enquire into it:" for which he cited 12 Co 98, and the Court in that case received the oath of a Grand Juror that less than twelve found the bill.

In the case of the United States vs. Coolidge (2 Gallison, 346, 337), Justice Story required the defendant to swear to his belief that the witness Lee gave evidence before the Grand Jury without oath, and then took the affidavit of the witness Lee to prove the fact; upon which the indictment was quashed. Judge Story remarked that "upon the 'law arising upon the facts there can be no doubt. 'The Grand Jury is the great inquest between the 'Government and the citizen. It is of the highest 'importance that this Inquisition be preserved in its 'purity, and that no citizen be tried until he has 'been regularly accused by the proper tribunal."

Justice Story also remarked that "every indictment is under the control of the Court;" and it is not to be disputed, that on a proper suggestion of the citizen of an irregularity, tending to destroy the public confidence in the safety of this institution, and a statement on oath of the defendant that such an irregularity actually exists, that the Court will see to it that no mere technical rules are allowed to prevail to hide the abuse from the correcting power of a Court of Justice.

On the main question there can hardly be two opinions. The rule is now almost, if not entirely, universal that the Grand Jury "are bound to take the best legal proof of which the case admits."

They "cannot receive in evidence the written examination of the witness in lieu of his parol testimony." [1 Chitty, Cr. L., 318, 419.

In a note to Christian's Blackstone (4 Black., 303), the rule is stated as follows;

"The Grand Jury ought never to be assisted by 'the depositions taken before the magistrate, except 'when these depositions could be read in evidence to 'the Petit Jury" (quoting Danby's case, Leach, 580).

And in Burr's case, the same question came up, and Ch. J. Marshall remarked that "neither affida- 'vits nor papers containing substantive testimony 'against the accused, ought to be sent to the Grand 'Jury." And Mr. Wirt, on behalf of the prosecution, admitted that "when a piece of written testi- 'mony was distinct and substantive, it was not ad- 'missible as evidence before the Grand Jury, but 'when it was explanatory of *viva voce* testimony it 'was properly admissible." [Burr's Trial, 199, 200.

Chief Justice Marshall finally instructed the Jury not to inspect any papers, but such as made part of the narrative of the witness, and were the papers of the defendant (page 202).

Such he also understood to be the rule laid down in Conkling's Treatise, 411: and such was undoubtedly the opinion of Ch. J. Bronson in The People vs. Hulburt (4 Denio, 136), who thought that an indictment might be set aside for being found upon *insufficient evidence*, or for irregularity in the proceedings; and, although no plea could be received against the record, still the indictment could be overthrown by motion.

He said as to the sixth ground of objection, that it was more striking than the one last discussed, for it is entirely settled that the ex-parte affidavit of the pretended owner of Jerry, could not be evidence in a Court of Justice, nor could he be identified by affidavits. It is unnecessary to urge here that no bill of indictment could be legally obtained for rescuing Jerry, until legal proof was exhibited before the Grand Jury of certain facts which lie at the foundation of these prosecutions.

Having now said all he desired, as to those irregularities which were outside of the record, he would proceed to the matters belonging to the record, which constituted a distinct ground, on which this motion to quash is founded; and would call attention to the extraordinary circumstances of the total absence of any *venire* to summon a Grand Jury, or any *return* by the Marshal, as required by the acts of Congress, as well as by the laws of this State. Hitherto he had spoken of the *qualifications* and *designation* of Grand Jurors, and had assumed that Grand Jurors are embraced in the acts of Congress to which he had referred.

It follows, almost necessarily, from *this* assumption, that the *mode* of summoning Grand Jurors is contained in the act of Congress of 1789. The *venire* clause of section 29 still remains. And he was prepared to show, by reference to authority, that even if the same rules prevail in the United States Courts, as in the highest courts of law of this State, that then it is the duty of the District Attorney to procure a *precept* or *venire* from the Clerk's office, to authorize the Marshal to summon the Jury, on which the Marshal will make his *return*; and that this *venire* and *return* are parts of the record of the indictment.

Most, if not all the laws of this State, which bear upon this question, are collected in Conkling's Treatise, page 267, &c. That work, however, does not profess to enter extensively into the criminal practice of the District Court, or to settle this precise question.

He would, therefore, examine this question, 1st, upon the assumption that the mode of summoning Grand Juries, in the United States Courts, is prescribed in the acts of Congress. 2d. Upon the assumption that the mode of summoning Grand Jurors is the same as in the highest courts of this State; and thirdly, upon the assumption that there is no act of Congress which prescribed the mode of summoning Grand Jurors, but that the power to summon them is only an incident of the criminal jurisdiction with which Congress has clothed the Circuit and District Courts of the United States.

[illegible] of the Judiciary Act of 1789. It will be observed that this section expressly requires "Jurors in all cases" to be *designated* according to the mode of forming juries *then* practiced, as far as practicable, in the State Courts; and among other requirements it is also provided that jurors "shall be returned as there shall be occasion for them from such parts of the District from time to time as the Court shall direct:" "and writs of *venire facias*, when directed 'by the Court, shall issue from the Clerk's office, 'and shall be returned by the Marshal in his proper 'person or by his Deputy," &c.

The Judge: Read on. It is necessary to a proper understanding of the object of that provision.

Mr. Morgan: After making provision for an indifferent person to serve the writ, where the Marshal is interested, the section contains this provision: "And when, from challenges or otherwise, there 'shall not be a jury to determine any civil or crimi- 'nal cause, the Marshal or his Deputy shall by or- 'der of the Court, return jurymen *de talibus circumstantibus* sufficient to complete the panel."

He would now refer to the act of 1800, which in a single section slightly amended the mode of designating jurors, requiring them to be designated according to the mode of forming jurors to serve *in the highest courts* of the State; but it does not profess to regulate the mode of *summoning* jurors, and leaves the *venire* clause of the 29th section of the judiciary act wholly untouched. After this comes the act of Congress of May 20, 1826, entitled, "An act to 'regulate the *summoning* (not the designation) of 'Grand Jurors," by which it is provided, "That from 'and after the first day of August next the Clerks of 'the District Courts of the United States shall not 'issue a process to summon or cause to be returned 'to any sessions of the said Courts, a Grand Jury, 'unless by special order of the District Judge."

He thought this provision clearly recognised the mode of summoning Grand Jurors by a precept or venire, as detailed in the 29th section of the judiciary act of 1789.

He did not rely so much, as some other of the counsel, upon the necessity of the special order, mentioned in this act. It might with some propriety be contended that this provision was intended as a matter of direction, to restrain the Clerk and Marshal from calling Grand Juries where no necessity existed for them; but the main thing to be observed, is the *venire* process, which alone can put the Marshal in motion, and which is a legislative recognition of the necessity of such a process in the United States Courts.

He said there was another act of Congress of great importance, which could not be omitted in this connection. He referred to the third section of "An act to regulate the proceedings in the Circuit and District Courts of the United States, and for other purposes." (Laws of 1846, chap. 98.) Now, there is a provision in this act that is quite imperative, that "no Grand Jury shall hereafter be summoned 'to attend any Circuit or District Court of the United 'States, unless the Judge of such District Court or 'one of the Judges of such Circuit Court shall, in 'his own discretion, or upon a notification by the 'District Attorney that such jury will be needed, 'order a *venire* to issue therefor."

The Judge: Is this any thing more than a mere direction to cause a jury to come before the Court, which might be complied with, without a formal precept under the seal of the Court?

Mr. Morgan: Such a construction would not be in accordance with the decisions of the Courts in similar cases. He would direct attention to the term *venire* here, which was a technical term and imported a writ under seal. Its office at common law was well known, and it was to be intended that Congress used the term *venire*, in its technical sense.

He would next examine this question upon the assumption that the *mode* of summoning Grand Jurors, as well as the *qualifications* and *designation* of Grand Jurors, was requiring to be in accordance with the practice in the *highest Courts* of the State; and although he did not accord with this view of the case, he was aware that such an impression was entertained to some extent in the legal profession; and the act of Congress of July 20, 1840, has been cited in aid of this opinion. On Burr's trial, the laws of Virginia were resorted to as governing the selection of Juries; and in the Pennsylvania Treason Trials, the Grand Jurors were selected according to the provisions of the Pennsylvania statutes. He thought the same course was adopted in the case of Fries and Callender. He would confidently say, however, that if this view of the case was to prevail in this Court, the result would be the same; for our statutes clearly require a *venire* precept in the Courts of Oyer and Terminer. He would first refer to the laws of this State containing similar provisions, and which had received a judicial construction by our Supreme Court; and he first cited an act of the Legislature passed February 26, 1788, entitled "An Act concerning Courts of Oyer and Terminer and Gaol Delivery," the second section of which required that Sheriffs should cause to come before said Courts twenty-four good and lawful men: and which also required the Clerk of the Supreme Court, fifteen days before the holding of such Courts, to issue precepts, under the seals of the same Supreme Courts, tested in the name of one of the Justices, to be directed to the Sheriff of the proper county, commanding him to summon said Jury. This act would be found in the second volume of New York Laws, page 81, Greenleaf's edition of 1788. And by a subsequent act of the Legislature, entitled "An act altering the times of holding the Courts," &c., passed March 27, 1799, it was provided in section 4 "that 'the precepts hereafter to be issued in pursuance of 'the second section (of the act of 1788) shall, in- 'stead of being made and issued by the Clerk of the 'Supreme Court, be made and issued by the As- 'sistant Attorneys General to the several counties 'within the respective districts, in manner and form 'as described in the said election."

The eleventh section of the act for regulating the trial of issues and for returning of able and sufficient Jurors, (1 N. R. L. 328) authorized the Clerks of counties to draw a panel of Jurors without any *venire* previously issued, and in all important respects required the same formalities to be observed as now demanded by the provisions of the Revised Statutes.

The question now arises as to the necessity of a precept, under these provisions. Section 37, 2 R. S., 206, requires the District Attorney of every county, at least twenty days before the time for holding any Courts of Oyer and Terminer, to issue a precept, to be tested and sealed in the same manner as process in such Courts, to be directed to the Sheriff of his county, among other things commanding the said Sheriff "to summon the several persons who shall 'have been drawn in his county, pursuant to law, to 'serve as Grand and Petit Jurors at the said Court, to appear thereat."

By reference to section 77, 2 R. S., 440, it would be seen that every Sheriff is required to make due return to any process delivered to him of his proceedings thereon.

It is also to be observed that this jury precept is abolished in County Courts by section 25, 2 R. S., 724, but in no other Courts. This leaves the question almost precisely as it stood when the case was decided of the People vs. M'Kay (18 John. Rep. 212). He read that case. Chief Justice Spencer there decided that a jury *venire* was absolutely necessary under similar provisions of the law; and because the *venire* issued to summon the Petit Jury in that case was without the seal of the Court, judgment was arrested after a conviction for murder. The Chief Justice observed in that case that "the two 'statutes being *in pari materia*, must both be taken 'into consideration in deciding whether the venire 'was intended to be dispensed with. If these are 'construed, together, it is manifest the Legislature 'did not intend to supercede the use of a *venire*."

He would also venture to say, that if the general rule is observed in this case, that in the construction of State statutes, the United States Courts will follow the construction given to those statutes by the State Courts, this precise question is put at rest by the judgment of the Supreme Court in the The People vs. M'Kay.

He would next advert to the question, whether a *venire* was necessary at the common law; and this question became important in the absence of any statute regulations as to the mode of summoning Grand Jurors. Although it had been supposed that the acts of Congress before referred to, include the summoning of Grand as well as Petit Jurors, he [illegible] United States vs. Hill; where Judge Brockholst Marshall, in 1809, denied that there was any [illegible] of Congress which conferred upon the United States 'Courts the right to summon Grand Jurors, and 'which described their powers." In that case, Chief Justice Marshall decided that the power to summon Grand Jurors resulted from the criminal jurisdiction of the District Courts, as incident thereto. This would leave the question as at common law, and the rule is thus stated by Chitty—(1 Ch. Cr. L. 310).

"Upon the summons of any Sessions of the Peace, 'and in cases of the commission of Oyer and Termi- 'ner and gaol delivery, there issues a precept, either 'in the name of the King or two or more Justices, 'directed to the Sheriff, upon which he is to return 'twenty-four or more out of the whole county, 'namely a sufficient number out of every hundred, 'from whom the Grand Jury is selected."

And it is further stated in the notes to the text, that a mere award of the Court, without a precept, will not do.

He would again recur to the case of The People vs. M'Kay, in which Chief Justice Spencer lays it down as not to be disputed, that at common law a *venire* was "absolutely necessary to authorize the Sheriff to summon a Jury." And in the Court of Appeals in South Carolina, in the case of The State vs. Williams and others (1st Rich. Rep., 183), the defendants were found guilty, and then moved in arrest of judgmeat, on the ground that the Grand Jury who found the indictments, and the Petit Jurors who convicted the prisoners, were summoned by writs of *venire* without the seals of the Court; and the Court arrested the judgment for that reason.

He then read from the case of Charles vs. The State (1st Spencer's N. J. Reports, 81,) where Chief Justice Hornblower, on a motion to quash an indictment, laid down the doctrine of the common law in equally strong terms—in which case it was held by the Court that the Sheriff's return ought to evince the authority by which he summoned the Grand Jury, whatever his authority might be, whether by writ or statute; and for want of a precept, except in those cases where the statute expressly dispenses with it, all indictments will be quashed It was stated in that case, that this *venire* and Sheriff's *return* thereon, were parts of the record.

He read also from the case of Nicholas vs. The State (2 South, 539), and insisted that in these two cases, the question was fully argued, and the decision arrived at without any qualification whatever, that a Grand Jury could only be obtained on a precept issued by the Court and properly returned; and that a body coming together as a Grand Jury without a *venire* IS NOT A GRAND JURY, and cannot make a presentment on which the defendant is bound to go to trial.

He then took up the paper on file, and the only one having any reference to the Grand Jury, who found these indictments. It was the list made up by the Deputy Marshal and certified by him and the Clerk of Erie county. The Marshal has made no return whatever on this list, as required by the 46th rule of the District Court, or by the revised statutes. This list has certain marks before the names of certain jurors.

Mr. Spencer: The letter "p" before these names, means personally served.

Mr. Hillis: It may just as well mean *pro-slavery*.

Mr Morgan: A proper return by the Marshal is indispensable. Chief Justice Spencer, in the case cited, deemed the *venire* important, because of the return to be made upon it by the Sheriff. Chief Justice Hornblower, in the case cited from the New Jersey reports, said that the statutes dispensing with a venire in certain cases, did not "do away with the 'established practice of showing upon the record the 'authority by which the jury was convened; and 'that this omission in the record cannot be cured 'by any guess work, intendment or presumption."

He would only remark, in conclusion, that he had endeavoured to confine himself to the questions arising on this motion; and that he had no difficulty in coming to the conclusion that it was the duty of the District Attorney of Northern New York, to procure from the Clerk of the District Court a *process* to summon the Grand Jury under the provisions of the act of Congress of 1846, whether the mode of summoning Jurors is to be governed by our State statutes or by the rules of the common law. The act of Congress recognises a *venire* as the process, which is to put the Marshal in motion—an officer whose duty is merely ministerial; and who in these cases put himself in motion and brought together a body of men to institute prosecutions against these defendants—a body of men who are "*not a Grand Jury*," and whose indictments should be quashed by this Court, as found without any authority whatever.

ARGUMENT OF GEN. LAWRENCE, U. S. ATTORNEY, IN OPPOSITION TO THE MOTION TO QUASH THE INDICTMENT.

Mr. Lawrence said he did not feel called upon to reply to a large portion of the speech of the defendants counsel (Mr. Sedgwick) who last addressed his Honour, because, in his judgment, it had no application to the question before the Court. He thought it was quite apparent now why these motions had been made. It was not so much with any hope of success, as to furnish an opportunity to make a display of this kind, to talk of Slavery for popular effect, and to prejudice in advance the minds of the Jury here in attendance to try these causes.

The gentleman had seen fit to abuse the Administration and vilify the laws of his country.

It was with pain he listened to that part of his speech wherein he seemed to encourage open resistance to those laws, and thought no punishment should be meted out to the transgressor.

He did not feel disposed to interrupt the gentleman for travelling out of the record to make these remarks, entirely foreign to the question; and so long as the Court was willing to hear them, he was content.

The Administration of the United States did not expect him to come here to defend them against *such* attacks from *such* a source. They needed no defence; they were content to be judged by their acts, and leave it to their countrymen and to posterity to do them justice.

If the gentleman meant to charge him with any *fraud* in obtaining these indictment, he could only say he was not borne out by the facts, and he despised all slanderous insinuations of the kind. [Mr. Sedgwick: "I meant nothing of the kind."] If his proceedings had been irregular, it was a fair subject for comment.

He agreed to all that had been said in relation to the importance which, in this country especially, was attached to the institution of a Grand Jury—it was the peculiar boast of the common law. The functions of a Grand Jury were based on a fundamental principle of the common law incorporated in the Constitution of the United States. That Constitution, the foundation on which this great confederacy rests, and under which the American people have enjoyed more rational liberty, prosperity and happiness than has fallen to the lot of any other people upon the face of the earth, provides that "in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have assistance of counsel for his defence." In the annals of history no institution is better fitted, on the one hand, to protect the citizen against abuses which might arise from popular influence, malicious prosecution, or executive dictation—on the other, to preserve and maintain the peace and good order of society; enforce obedience to the laws of the country, and bring the transgressors of those laws to justice. If in this case the Grand Jury were corruptly packed, as had been contended by the defendant's counsel, he would say, as the prosecuting officer of this Government, that he asked not that their presentments should be upheld.

The Government of this country was a paternal one. It asks nothing of its citizens but obedience to the laws of their own making—he repeated, *of their own making*; for here, where all power is in the hands of the people, every citizen may be said to be a part of that Government, and he has a voice, through his representatives in Congress, in the making, altering and repealing of all the laws of that Government.

The President is sworn to protect and defend the Constitution of the United States, and that Constitution declares that "*he shall take care that the laws be faithfully executed.*" But neither he nor his subordi- any corrupt or illegal [illegible] Jury have been corruptly swayed, by political motives, to find these bills, if they have through "fear, favour, affection, reward or the hope of reward," presented these bills untruly, then have they basely violated their oaths, and we can only loathe and abhor them, and their action. If, on the contrary, they have been fairly chosen, and there is nothing to impeach them or their conduct, it is of the first importance that their action should be upheld.

He should proceed, as briefly as possible, to discuss the several points on which the motion was made to quash these indictments. They were classed as follows:

I. That there was no legal order of the Judge for summoning the Grand Jury.

II. That no *venire* was issued—nor any return.

III. The fraudulent drawing and empannelling of the jury.

IV. That the witnesses were not legally sworn.

V. That the clerk and assistant of the U. States Attorney appeared before the Grand Jury and took minutes of the testimony.

VI. That affidavits were improperly read in evidence to the Grand Jury.

VII. That there was no evidence that the alleged fugitive owed service and labour.

I. In order to ascertain whether there was a legal order for the summoning of the Grand Jury, it will be necessary to recur in the first place to some of the statutes of the United States. The act approved May 13, 1800, enacted that "Jurors to serve in the Courts of the United States shall be designated by lot or *otherwise*, in each State or District respectively, according to the mode of forming juries to serve in the highest Courts of law therein now practised, so far as the same shall render such designation practicable by the Courts and Marshals of the United States"

The next act, to which it will be necessary to refer, is the act approved July 20, 1840, which provides that "Jurors to serve in the Courts of the United States, in each State respectively, shall have the like qualifications, and be entitled to the like exemptions as Jurors of the highest Courts of law now have, &c., and shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries now *practiced*, or hereafter to be practiced therein, in so far as such mode may be practicable by the Courts of the United States or the officers thereof, and for this purpose the said Courts shall have power to make all necessary rules and regulations for conforming the designation and empannelling of juries, in substance, to the laws and usages now in force in such State; and further shall have power, by rule or order, from time to time, to conform the same, to any change in these respects which may hereafter be adopted by the Legislatures of the respective States, for State Courts."

Previous to the passage of this act, a process was issued to the Marshal to summon twenty-four good and lawful men, to appear as a Grand Jury, and he summoned whom he pleased. After the passage of this act, this Court adopted rules, in strict conformity to which this Jury were drawn in this case by the Deputy Marshal, in the presence and with the assistance of the Clerk of the county of Erie.

In 1840, when this law of Congress was passed, there was a statute of this State (2 R. S., page 810, sec. 25) which read as follows:

"It shall not be necessary for the Judges of the County Courts, or the Justices of the Peace of any county, to issue any precept to the Sheriff to summon any Grand Jury for any Court of General Sessions; but the list of persons certified to be drawn for that purpose, by the County Clerk and the officers attending such drawing, shall authorize and make it the duty of the Sheriff to summon and return such persons as Grand Jurors."

Now, sir, here was *a mode* of forming a Grand Jury in the State of New York, which this Court had the power, by the express terms of the act of Congress of 1840, before cited, to adopt as the practice of this Court.

He affirmed with confidence that this had been the practice of this court ever since.

There was nothing in the act of Congress of 1840, which required this Court to adapt its practice, in this respect, to that of the highest Court of law; so that if there be different modes of summoning a Grand Jury in different Courts in this State, as is absurdly contended by the defendants' counsel, this Court had the right to choose either, for it could not adopt both. That which was the most simple and convenient should be taken as the guide.

Formerly, without any particular statute of the United States as to the attendance of Grand Jurors at every term, but rather as an *incident* to a Court of criminal jurisdiction, Grand Jurors were summoned at every term, and often had nothing to do but to listen to the charge of the Court, adjourn and receive their pay.

To remedy this unnecessary proceeding, and save expense, Congress passed an act, approved August 8, 1846, that no Grand Jury should thereafter be summoned to attend any Circuit or District Court of the United States, unless the Judge of such District Court, or one of the Judges of the Circuit Court, should in his own discretion, or upon a notification by the District Attorney, that such jury would be needed, order a venire to be issued therefor.

The whole object of this provision was to prevent an unnecessary multiplication of Grand Jurors. It does not profess, nor was it intended, to repeal or alter the law of 1840, nor to alter or change the practice then existing, as to the manner of procuring a Grand Jury; the word *venire* is used because the act was general, and in some of the States a *venire* was used. The word *venire* here is not used in its technical sense, but as the order of the Court for summoning the Grand Jury, as practiced in the particular State where made; otherwise, where *venires* are abolished, as in this State, you would still have to adopt a different mode in this Court from that of the Courts of this State, and thus violate the plain object of Congress, as manifested by the act of 1840, which was to make the practice identical in both Courts, so far as practicable.

It is contended that this order of the Judge must be in writing. It will not be contended that the Judge is actually to *sign* the order; for whoever heard of a Court who orders a thing to be done, being required to do this? He supposed, however, the counsel meant that the Clerk, on being ordered to issue the necessary notice for the drawing and summoning of a Grand Jury, should first enter an order for that purpose. This he denied. No case had been cited to show its necessity. The only thing material to be done was for the Clerk to issue the order or notice to the Marshal to draw and summon a Grand Jury, according to the practice of the Court. The manner in which this was to be done by the Deputy Marshal, was pointed out by rules 46 and 83 of this Court—rule 83 conforming the practice as far as practicable to the Revised Statutes, the laws of Congress and the former rules of the Court in this respect. No one had been prejudiced by the omission.

But there is another answer to this objection. The act of 1846 is merely *directory* to the Judge. If the Clerk should have entered this order in some book of records in his office but neglected to do so, nothing is better settled, than that it can be done, *nunc pro tunc*; for the purpose of this cause it will be considered as done, and may be entered at any time. Thus had he shown that the order was properly made and that no *venire* was necessary. This Court had expressly decided this question, that a *venire* was not necessary, certainly as long ago as 1842. in the treatise published by his Honour upon the practice of the Courts of the United States, page 207, where it is said "under the rules of the Courts for the Northern District of New York a *venire* is no longer necessary." If there was no necessity then for a *venire*, he had to show that no law had made it necessary since. Certainly there is no necessity for a *venire* now, since the persons to serve as Grand Jurors, are those persons drawn. The *venire* required the Marshal to cause to come twenty-four good and lawful men, as Grand Jurors, at his discretion—but now he has no discretion. To issue a *venire*, therefore, is not only unnecessary but absurd.

II. The second objection is, that there was fraud on the part of the Deputy Marshal in drawing and empannelling the Jury. This presents a question of fact.

In the first place, it is a high charge to make against a public officer acting under oath, and ought [illegible] fact sworn to in the affidavits on the part of the defendants, which tended to establish the least unfairness or fraud on the part of the Deputy, Mr. Gates. Davis and Sumers, two of the Defendants, swear to something they have heard, we know not from whom, and which they say they believe; but this is no evidence of any *fact*; their information may have been false, or their informant not entitled to credit. A man by the name of Hollis White also comes to the aid of his friends, and undertakes to swear that he is acquainted with a large number of the Grand Jurors, and so far as he has any knowledge or belief, all the persons named therein are known in their respective neighbourhoods, as being what are usually called *pro-slavery men!* with the exception of three, one of whom has no politics, and the other two are reputed to be *Free Soilers*; that several of the Grand Jury are known to him to be violent, noisy and ultra *pro-slavery* men prominent for their vociferous expressions of their opinions upon the question of Slavery. Who this Hollis White is, and what kind of a man he is, thus to libel his neighbours, who are proved to be men of the highest respectability, may be judged of by the character of his statement, and the contradiction we bring.

The defendants are fortunate in finding one such man in Buffalo—his mate is not there; and his only wonder was that some of the numerous counsel on the other side would allow such an affidavit to be read in this Court. It may answer to grace the columns of certain fanatical newspapers, but was quite out of place on this motion in a court of justice. The only apology for Hollis White, is to suppose that he does not understand the meaning of the word *pro-slavery*. If he means by this that these gentlemen are in favour of obedience to the Constitution and laws of the United States, and maintaining their supremacy, then he may be right; and I venture to say that in drawing out all of the 300 names from the Grand Jury box in that respectable county, no twenty-four names would be found with a less proportion of men of this description than appear upon this panel And is this an objection to a Grand Juror? Has it come to this, that none but those who contend for the doctrine that any man may disobey any law of Congress which is not exactly in accordance with his views, and which he may please to call unconst

culty with our opponents is, they all turned out to be good men.

But he did not summon all the jurors. Two persons did not have legal notice six days before the sitting of the Court. Then, of course, he could not return them as summoned in this way. The rule, as we have seen, required him to return the list and *specify* those he had summoned. This he did. The rule did not require him to specify in *writing*, those he had summoned, nor how he had summoned them. It was sufficient that he informed the Court or the Clerk, who, and when and how, he had summoned them. If they all appeared on the list, being called, very well; that was all that was wanted. If the Judge wished to fine the absentees, it would then become necessary, perhaps, to have an official certificate in writing, or an affidavit as to the time and manner of service; but it was in no otherwise material. He, Mr. L. was told that it was not the practice of the Sheriffs or Marshals to make any certificate in writing. If such had been the practice, he ventured to say the experienced Clerk of this Court would have drawn it himself, or called the attention of the Deputy to the subject, before he called the Jury.

But here, again, he would say, the rule is merely *directory*, and the omission does not vitiate; the Deputy may amend his return at any time, or make it *de bene esse*. In the case of the Commonwealth vs. Parker, 2d Pickering, 559, et seq. it was thus held, and that was the case of a *venire* upon which the Statute of that State required the officer's return so be endorsed. The Court permitted him to sign his return even after conviction. It was the mere omission of the officer, which could not prejudice any body.

Again, it is said that the Deputy Marshal omitted to summon two of the panel. He ventured to say that this was as full a service as is often made by any Sheriff or Marshal.

It must be remembered that the Deputy Marshal had sixty men to summon on these two two juries, scattered over Erie county, between the 23d day of October and the 4th of November (only eleven days), for the service was to be at least six days before the term, which was to commence on the 11th day of November. Mr. Gates swears that the omission to summon these two men was entirely through inadvertance not intentional. This undoubtedly arose from his having sent early word to them of their having been drawn, which led him to suppose all were summoned, until the morning the Court was to commence, when, on preparing his list for Court, he discovered his mistake.

He then went to the house of Mr. Ketchum, to Black Rock, to get him to come to Court. He had already gone to Court, having received the notice sent to him by Gates through Mr. Miller. Gates had time only to return to Court, where he found Mr. Ketchum, told him he was drawn on the Grand Jury, and he served as such, although he was exempt by his age. Mr. Bailey was not notified by Gates, although he had received the notice sent to him by his hired man. It would have been of no use then, as he would not be obliged to come upon so short a notice. The counsel thought it was strange that Gates did not notify Bailey as well as Ketchum, on the morning of the Court—both living in the same town. The answer is, that Bailey lived in another and more distant part of the town, and he had not time.

It will not and has not been contended that the unintentional omission to summon *every* man on the panel, will affect the proceedings—nor is this of itself any ground of suspician—and the affidavits in support of the motion entirely fail to show any facts to prove fraud. It will be long before any Court will stamp the acts of a public officer with fraud, acting under oath, and having no inducement to commit the fraud, upon mere fanatical suspicion.

III. It is said the witnesses were not legally sworn. The duty of the Grand Jury is, 1st. To inquire into all infractions of the laws of the United States, cognisable in the District Court, committed within the district. 2d. To inquire by whom those offences were committed. 3d. Having ascertained this, they are to present them for trial.

Now to say that a witness cannot be sworn to testify before a Grand Jury until you know the true *name* of the individual to be indicted, would be a proposition too monstrous to be maintained for a moment; yet if you do not know his name, you cannot legally swear a witness to go before the Grand Jury to testify as to the matter, according to the doctrine here contended for on the other side. By the oath which the Grand Jurors took, they swore "they would diligently enquire and true presentment make, *as to all matters and things which should be given them in charge*," &c. Now your Honour will recollect referred to the Syracuse riot on the 1st of October, and gave that subject especially in charge of the Grand Jury. Did your Honour mean to limit their inquiries to the few persons who had been arrested and whose names were known? or were not their enquiries to extend to all that might be proved before them to have participated in the violation of the law on that occasion? Keep in mind that it was but a single transaction, happening at the same time and at the same place, and all the persons engaged in that breach of the law, were *jointly and severally liable to indictment*. Suppose two hundred persons were engaged in the same act—that of rescuing the fugitive, in aiding his escape, or resisting the execution of the process of the United States—and the Grand Jury saw fit to embrace them in one indictment, must every defendant's name be mentioned in the oath to every witness? This would be absurd. Suppose a witness is called and sworn to testify against A. B. He goes before the Grand Jury, and in addition to A. B., he implicates C. D, engaged at the same time in the same transaction, has he got to be again sent into Court and sworn against C. D. and testify again against C. D. before the Grand Jury? Most certainly this must be the course if the defendants are right in this objection; for not having been sworn to give evidence against C. D., his testimony is to be rejected; and so you proceed until he has identified perhaps fifty persons, and is sworn fifty times. Indeed, it would follow that he could not be enquired of at all, as to any person except the one whose name has been mentioned in his oath, and that you would be precluded from finding out the names of the persons engaged. Here is a case where we know a great many persons were engaged. But it was dark; they put out the light: they put on disguise. We may not be able to identify but few of the multitude by witnesses who are *willing* to testify to what they saw. We subpœna those whom we suppose know. How are we to compel them to testify? It is no answer to say that this would put it in the power of the Government, or the Grand Jury, to cause all the citizens of the county to be subpœnaed. The Court will take care that its process is not abused. Nor is it any answer to say that you must appear before a committing magistrate in the first place This is only resorted to where there is danger of the defendants absconding, and besides it is liable to the same objection as to the number of witnesses, and is an additional expense.

We have a case in point, in this view of the matter, Ward vs. State, 2d, Missouri, 120. In that case, Ward was subpœnaed by order of the grand jury, to testify generally, without saying in what particular matter or cause he was to testify. Ward accordingly appeared and was sworn to give evidence before the grand jury. He went before the grand jury to testify. The first question was: "Do you know of any person or persons having bet at a faro table in this county within the last twelve months?" Answer—"I do." The foreman then desired the witness to tell what person or persons have so bet, other than himself, and not naming himself. The witness declined answering, saying he could not answer without criminating himself. Ward was then sent to the Court, who directed him to answer the requirement, but not to name himself as a better. This he refused to do and was committed. It does not appear whether the Court had previously given the matter in question as a nuisance, to the Grand Jury. A writ of error was brought and superceded as asked for. One question was, whether the Grand Jury had the right to interrogate the witness in this general way, and it was insisted that an indictment should have been drawn up charging some particular person with crimes, and that the witness should then be required to give his testimony as to the matter of the indictment—otherwise the Grand Jury may send for every person in the country, and enquire generally, if he knows of any offence against law, and this would be oppressive and dangerous. The Court say the first answer to this is, that it is the duty of the Grand Jury diligently to inquire of all offences against law. The next answer is, that no such case appears by the record. The Jury had probable cause to believe some offences had been committed against law, and so believing, they desired in discharge of their oaths and their duty to their country, to inquire; and how should they inquire, but to send for persons, who might, in their opinion, be most likely to prove evidence in relation to these matters." This is the course we adopted in this cause, as the affidavits prove.

He had cited this case to show that it is not necessary that the witness should be sworn as against *all* the persons by name against whom he may be called to testify. He went further and said, that if the oath had been administered in this case without the name of "Moses Summers and others," it would have been sufficient. It would then read thus, "The evidence you shall give to the Grand inquest in behalf of the United States, concerning which you shall be interrogated shall be the truth, the whole truth, and nothing but the truth, so help you God."

If such oath would be good, *a fortiori*, was the oath good, as administered in this case, against "Moses Summers and others?" Moses Summers was indicted by the Grand Jury, charged with this offence on the 1st of October, at Syracuse; twenty-five others were indicted for participating in precisely the same transaction, and by similar indictments. How is it upon the trial of an indictment or civil suit, where the parties are numerous? He had never heard any Court or Clerk name all the defendants or plaintiffs in such a case, in administering the oath to witnesses. But it is said perjury could not be predicated upon such an oath. Why not? There is no action pending or issue joined when the oath is administered.

We will suppose, said Mr. L., the witness swore falsely before the Grand Jury against Moses Summers and all or any of these defendants, concerning whom he was interrogated, would it not be sufficient to aver that under that oath he was interrogated before the Grand Jury against Moses Summers and these defendants, on behalf of the United States, upon this charge (giving his evidence), with proper averments of materiality and falsity? If not, half the witnesses sworn in Court every day, where the name of one party "and others" are only mentioned, could not be indicted.

The Crimes Act of the United States, approved March, 3, 1825, sec. 13, makes it perjury for any person, knowingly and wilfully, to swear falsely in any case, matter, hearing or other proceeding, when an oath shall be required or administered under or by virtue of any law of the United States. No case has been cited to show that an indictment cannot be predicated upon an oath administered in this way.

Roscoe, in his Treatise on Criminal Law, page 223-4, says, "An improper mode of swearing the witness will not vitiate the Indictment, as the Grand Jury are at liberty to find a bill upon their own knowledge. See also 41, English Com. Law Reports, 239; Russel's case, Carr & M., 247.

"Nor can the Judge enquire on the trial whether the witnesses were *properly sworn* previous to their going before the Grand Jury."

In the case cited from 2d Gallison, 236, a witness refused to be sworn, said he had resolved not to be sworn, and was committed to prison; pending which, it appeared he was the witness before the Grand Jury, and had testified without *being sworn at all*. There seemed to be little opposition to the motion, and probably that was deemed the best way to get along with the witnesses, and the Indictment was quashed.

There is no pretence that any of our witnesses were not sworn at all; and he, Mr. L., had shown a case of as high authority as of any single Judge in this country, that the Judge cannot, on the trial, enquire whether the witnesses were *properly sworn*.

IV. That the assistant of the United States Attorney appeared with the District Attorney, and took the minutes of the testimony.

No case has been cited to show that this was improper; he was an officer of the Court,

In this case, the assistant did not examine a single witness, nor have any conversation with the jury. He was not present during the deliberations or voting of the jury. It is true that since May, 1850, when he was admitted as an attorney of this court, his son had often appeared for him (Mr. L.) before the Grand Jury, at different terms, examined the witnesses and drawn the indictments; if this is wrong, your Honour, said Mr. L., will have to share the responsibility with me, for it was done with your knowledge, consent and advice. But it was not wrong—indeed it is the only course to be adopted without great inconvenience and delay in the public business, when the District Attorney is required to attend to the trial of causes of the United States while the Grand Jury are in session. It is the practice in the Southern District of this State—was the practice of my predecessors, and no injury therefrom could have arisen in this case. To quash all these indictments, and many more, for this cause, and without precedent, would be a very bold operation, in his judgment.

V. That affidavits were improperly read to the Jury in evidence.

The mistake is in the first place, that the point is not true in point of fact—the affidavits were not read in evidence to the jury. They were read to the witnesses then before the jury, and he was enquired of to see if all like the case of the reading in evidence to the jury affidavits of persons who do not appear before the jury and which are not proved. They are no evidence at all, the jury can not know even whether they are genuine, they are simple papers purporting to be affidavits. Here, the witness was duly sworn and was before the Grand Jury, you ask him if a statement of facts which he has made in writing and which is pertinent to the matter to which he is called to testify, is a true statement: it then becomes the testimony on oath of the witness before the jury. Suppose he had held the affidavit in his hand, and when inquired of what he knew as to certain matters before the Grand Jury, he had read his written statement as an answer to the question, could he not be indicted if his answer thus given was wilfully false? Most undoubtedly; and his written answer would furnish the surest and easiest way for his conviction, there would then be no mistake as to his testimony.

After this, the witness was interrogated further in most cases, and always if desired. Our affidavits show that this was done with the consent of the Grand Jury and only for the sake of saving time in that long investigation. It might not be strictly correct upon a direct examination on a trial if objected to—nor would a leading question be correct on a trial if objected to; it amounted to little more than a leading question "did you make oath to such and such facts?" Answer—Yes. "Is that the truth. Answer—Yes. And yet whoever heard of a motion to quash an indictment because the District Attorney or the Grand Jury asked leading questions?

In your Honour's Treatise, page 411, in regard to the *kind* of evidence which a Grand Jury may receive, it is said "that it should in general be such only as is denominated legal evidence. It must be the best in its nature of which the case admits, and must be given on oath. A Grand Jury cannot, therefore, for example, receive in evidence the written examination of a witness in lieu of his parol testimony. A mere office copy of a document cannot be received in lieu of the original; and evidence of what third persons have said is inadmissible."

All this is very correct. What the consequences might be in case the Grand Jury should err in judgment in receiving such evidence, and how taken advantage of, is not stated. Your Honour was undoubtedly laying down rules for the guidance of Grand Juries, and those who appeared before them. It would no doubt be incorrect to read affidavits in evidence to the Grand Jury, unless the witness orally upon oath proved the facts to be true. He could see no danger in this course any more than if the witness had orally stated the same facts upon oath before the jury. He might certainly use it as a memorandum to refresh his recollection even upon a trial, and it could not be prevented. What more did he do in this case? If not strictly regular, the irregularity is not such an one as to warrant the quashing of these indictments. It was the precise course adopted by your Honour when the defendants were brought before your Honour on this charge. That was an examination to see whether there was evidence sufficient to hold these defendants to appear before the Grand Jury.

In Roscoe's Crim. Ev. page 223, and Archibald's C. L. 9th ed., it is said—"The grand jury should require the same evidence, written and parole, as may be necessary to support the indictment at the trial. They are not, however, usually very strict as to documentary evidence. They often admit copies where the originals alone are evidence, and sometimes even evidence by parole of a matter which should be proved by written evidence." It would seem from this, that no such consequence as that of quashing the indictment should be the consequence of every mistake in the receipt of evidence by the grand jury. But he put his argument upon the ground, that no affidavits had been read in evidence to the jury in this case; and where it is seen that all the evidence given was testified to by the witness, and no injury done to the defendants, this motion can not be entertained for this cause.

VIth. No evidence given that the alleged fugitive owed service and labour, or had escaped.

This is but another way of saying there was not sufficient evidence before the Grand Jury to find an indictment, which can never be enquired into upon motion. No collateral issue of this kind can or ought to be enquired into, upon affidavits. What would be the result, if the merits of every presentment of a Grand Jury could be tried upon motion before it is tried by a Petit Jury? It would open the door for an immense amount of perjury.

But how does it appear that there was no such evidence? No juryman can be allowed to impeach his finding by making an affidavit of any such fact. There is no evidence here on the subject. True, the defendants say they have been informed and believe there was no such evidence. Is that enough to establish such a fact as this? Affidavits, too, made by the indicted party. The affidavits prove nothing.

2. It was not necessary to prove this fact before the Grand Jury. No such fact was proved before your Honour, and you held them to bail. The defendants are charged in the indictment with having aided and assisted Jerry, an alleged fugitive from service and labour, and arrested as such, upon legal process, to escape from the officers having him in charge. This is sufficient proof under the act of 1850.

3. But in reference to some of the counts in the indictment, it was clearly unnecessary to prove this fact. These counts charge the defendants with wilfully and knowingly *resisting the execution of process of the United States* on that occasion.

It is well settled if there be one good count, the Indictment cannot be quashed on motion. There is no pretence here that there was not evidence enough to sustain these counts. In conclusion, I would remark, that the Court will never quash an indictment except in a very clear case. Roscoe's C. Law, 233; Wharton, 133; 4 Yates, 69; 1 Dev. & Batt. 198; 3 Pike, 84.

Mr. L. hardly knew how many motions were before the Court. In the first place, the motion was made in the case of Enoch Reed, and the counsel were to serve the papers on us one day before the motion was made When the papers were served, the titles of other cases were annexed. Upon these papers, the motion was attempted to be made, and the affidavits being defective, were rejected, with leave to renew the motion. When the papers were again served, more titles were added, embracing all the cases upon which the defendants had been arrested. (Judge: I was not aware of this.) He would suggest that the first motion, in the case of Enoch Reed, be decided; and if the Indictment was quashed, it would then assume so much importance, that he should respectfully ask that the other indictments be remitted to the Circuit Court, without prejudice to the right of the defendants to renew their motion there, to which he presumed this Court would have no objection. He considered that but one motion was regularly before the Court, It was unusual to move to quash eleven indictments against different persons on one motion.

National Anti-Slavery Standard.

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NEW YORK, THURSDAY, FEBRUARY 5, 1852.

THE SYRACUSE RESCUE TRIALS.

A large portion of this sheet is given up to the report of the speeches of counsel in the preliminary proceedings in the Syracuse Rescue Case, before the Circuit Court at Albany; and we have used so large a space for this purpose, because, however little they may attract public attention, the trials arising under the Fugitive Slave Act are events of supreme importance to the people of this country now, and to their destiny for the future. It is the old struggle between Liberty and Despotism, under a new form, and concerns not merely the black slave of the South, but the white freeman of the North as well. It is evidently the determination of the Government to secure, in these trials, a conviction, if fraud, corruption, chicane, and prostituted power, can, under the forms of law, ensure such a result. The political blacklegs, who dignify themselves with the title of American statesmen, look upon such events as the turning of a new tramp in the great game in which they are engaged, are anxions for nothing but the odd trick, and glad of any chance that fortune may have placed in their hands whereby to gain it. This bit of good luck has befallen Mr. Fillmore's administration, and he means to make the most of it.

Hitherto this Abolitionism has been as great an annoyance, to these huckstering statesmen, as an anti-gambling lecturer would be upon a race-course to a parcel of thimble-riggers, and for precisely the same reason—it damaged the business. But it has been not only an annoyance; it was no less a puzzle. What it was after, they did not so much care; nor why it was after it. But what they should do with the thing itself, they did care, though they never could tell. To seek and wheedle it when out of power was gained, was unfortunately a game that both parties could play at, and neither could play at successfully long; and, still more unfortunately, the plague was just as virulent, just as impracticable, and needing just as much to be disposed of, after all was done, as if nothing had been done at all, and making it very plain to the cunning tricksters themselves that it was rather they and not it that had been made a fool of, and that it was all the while making them do its work while they hoped it was doing theirs.

Of course this state of things has been exceedingly unsatisfactory, and not a political aspirant of the country that does not owe Abolitionism a hearty grudge, for the mad pranks it has made them all, from Webster down to Fillmore, play before Heaven and Earth. They had tried using it long enough, but to no purpose. The next best thing was to kill it, and that, these many years, they would have been glad to do, if they only could. They themselves never ever pretended to a hope of it, till the last session of Congress, and the passage of the Fugitive Slave Law. Perhaps they are right, and the cause of Anti-Slavery is really doomed to destruction in this struggle. We are willing to recognise the possibity of it, but, at the same time, this we do know that when Anti-Slavery dies in this country, it dies not alone. If the Government succeeds in suppressing it, it must suppress, at the same time, the spirit of Liberty and the Rights of the whole people; and though the result of the Christiana trials, and of those in Boston forbid that we should apprehend any such desperate termination to the present struggle, yet as the price of Liberty is eternal vigilance, the result must depend upon the watchfulness of those who are battling in behalf of Freedom.

It is therefore that we hold that no events are now transpiring around us at all to be compared in importance to these trials; and it is our duty as well as inclination to keep those dependent on this paper for information relating to the great Anti-Slavery movement fully informed as to all the steps taken by the Government to deliver over to the Hangman or the Jailor such citizens as may render themselves obnoxious to the laws requiring the catching and rendition of fugitive bondmen. The speeches of counsel before Judge Conkling are worthy of a careful perusal, as showing the steps first taken to procure the conviction of the Syracuse prisoners. The reasons for the motion to quash the indictment are made perfectly evident and satisfactory by the speech of Mr. Morgan. The motion itself was founded on the following affidavit, which reveals, very clearly, the *animus* of the prosecutor:

Northern District of New York, city and county of Albany, ss: Hollis White, of Buffalo, being duly sworn, says he has been a resident of Buffalo and Niagara Falls, since 1838; that he has seen a list of the Grand Jury, who were said to be drawn for the last November term of the United States District Court, at Buffalo, a copy of which list is hereto annexed; that this deponent is acquainted with a large number of persons on said list, and so far as he has any knowledge or belief, all of the persons named therein are reputed and known in their respective neighbourhoods as being what are usually called pro-slavery men, with the exception of two persons, who are reputed to be free-soilers, to wit: William Bailey and Jesse Ketchum, and one other person, to wit: Joseph Habestro, whose political opinions are not known by reputation or otherwise to this deponent—that as deponent is informed and believes, the said William Bailey and Jesse Ketchum, although their names appeared on the panel of said Grand Jury, were not summoned or *notified* to attend the sitting of said jury, and that the said Ketchum having heard by chance that he had been drawn on the jury, voluntarily attended during the session—that several of the Grand Jury named in the above list *are known to this deponent to be violent, noisy, and ultra pro-slavery men*, and who are prominent among their neighbours and acquaintances in the frequent and *re-ciferous expressions of their opinions upon the question of Slavery* that this deponent was in Buffalo when the Grand Jury was in session, and during said time heard frequent conversations among the citizens in relation to the peculiar and uniform predilections of said jury on the subject of Slavery, and that as far as this deponent knows or believes, a very general opinion existed in Buffalo, that said jury had been empannelled by unfair and corrupt means, and that the same was packed with special reference to the finding of bills of indictment against the persons charged to be engaged in the rescue of the alleged slave, Jerry, at Syracuse, and for her this deponent says not.

HOLLIS WHITE.

Sworn this 21st of January, 1850, before me,
JOHN W. EDMONDS,
Justice of the Supreme Court.

The counsel for the prisoners have justified the confidence reposed in them in defeating this conspiracy. The next 'dodge' of the Government is to put the case in hands that can be trusted, by removing it from the District to the Circuit Court, and thus relieving Judge Conkling from the necessity of giving any decision on the motion before him. His reasons for this removal of the case are as follows, and were given, at the opening of the Court on Friday:

The indictment in each of these cases is for aiding in the escape and for the rescuing of an alleged fugitive from labour, on the first day of October, in the City of Syracuse.

On the second day of the term, motions were made to quash the indictments for reasons set forth in the numerous affidavits.

At the request of the counsel for the United States, copies of these affidavits were directed to be forwarded to them, and time was given to them to obtain counter affidavits.

On the adjourned day the counsel for the United States objected to the reading of the affidavits, on the ground that they were not entitled, and time was then given to defendants to supply the omission, and to have the affidavits re-sworn.

Owing chiefly to these delays and to the great number objections made, but partly also to the somewhat discursive line of argument which the learned counsel saw fit to pursue, the discussion was not concluded until the eighth day of the term.

I have devoted time to the examination of these objections, and all the attention which the brief period allotted for that purpose, interrupted as it has been by other duties, has permitted.

None of them are unimportant in their nature, or so obviously untenable as to be unworthy of consideration, and some of them present questions of great importance, and, in my deliberate opinion of very considerable difficulty; the task of deciding them, therefore, is one of great responsibility.

But while I have no right or disposition to evade any responsibility imposed on me by law, I am as little disposed voluntarily to assume any which I am permitted by law becomingly to avoid.

Therefore it was that I took occasion to say, at the close of the argument, that should the question before me appear on further consideration to be such as to warrant my so doing, I might possibly determine to transmit my indictments to the Circuit Court, pursuant to the provisions of the act of August 8th, 1846, ch. 98.

By the 3d section of the act it is enacted: "The District Court may remit to the Circuit Court any indictment pending in the said District Court, if difficult and important questions of law are involved in the case, and the proceedings thereafter shall be the same in the Circuit Court, as if such indictment had been originally found and prosecuted therein."

The criminal jurisdiction originally conferred in the District Court, except in those few districts in which no District Courts were established, was extremely limited, and so it remained until, by the act of Aug. 23, 1842, it was extended to all cases not capital.

Nor were there wanting sufficient reasons for withholding a criminal jurisdiction of these Courts, for in addition to the presumed inferiority of the District Judges in learning and ability to the Judges of the Supreme Court, one of whom, with the District Judge, constituted the Circuit Court, it may well have been thought indiscreet to impose such jurisdiction on a single Judge, against whose decision in criminal cases it was not deemed advisable to provide any appeal.

On the other hand, provision was made for obtaining the judgment of the Supreme Court on questions of difficulty and importance, arising in such cases in the Circuit Court, by a certificate of opinions opposed. And the law, it may be presumed, would for that reason remained unchanged, had it not been for the great increase of civil business in the Circuit Courts, rendering it highly desirable to relieve them from a portion of their labours in criminal cases.

It was doubtless for these reasons, also, that it was deemed necessary or expedient to provide for the act already mentioned for the transmission of cases involving difficult and important questions of law from the District to the Circuit Court.

The provision may therefore improperly be regarded as a *quasi* limitation upon the new jurisdiction invested in the District Court; for in this conferring of discretionary authority, Congress doubtless intended to impress their discretion as to effectuate the obvious policy of the act.

That some of the questions involved in these cases are, in my judgment, of the character designated in the act I have already taken occasion to observe. Other questions not the less important fell from the counsel for defendants.

Still, however, the power of removal being discretionary, the Court, in determining upon the propriety of its exercise, is bound to look to all the essential circumstances of the particular case before it.

Considering the large number of witnesses, some of them from remote places, who are said to be in attendance on the Court for the purpose of testifying upon the trials of the indictments which it was designed to try at this time, it would be a misfortune to render their attendance fruitless, by sending the indictments to the Circuit Court, if, in reality, they were valid, and ought to be held.

But I am distinctly informed by one of the counsel for the United States, that an intention to bring any one of the indictments to trial at the present session of the Court has been abandoned, even though these motions should be denied.

It was stated also, by the District Attorney, to have been his intention originally and at all times to request the transmission to the Circuit Court of all the indictments arising under the Fugitive Slave act, except four or five which he designed to try at this time in this Court.

There is, however, still another point to which it is proper to advert. The seventh section of the act of September, 1850, under which these cases arise, enacts that for any of the offences therein described the offenders shall be subjected to a fine not exceeding $1,000, and imprisonment not exceeding 6 months, by indictment, "on conviction before the District Court of the United States for the District in which such offence may have been committed."

Had there been no expression of judicial opinion on the question, I should have felt it to be my duty to enquire how the third section of the act of 1846, which I have already cited, considering it to be prospective, can properly be held to embrace indictments for offenses created by subsequent statutes, and declared to be punishable only in the District Court.

But I am well informed that it has been so adjudged after full consideration in the Circuit Court for the District, in which the Court, expresses the opinion that such is the sound construction of the act.

I am absolved, therefore, from the necessity of entering upon the examination of the question.

The apprehension intimated by the counsel, that by the transmission of the indictment to the Circuit Court the defendants might be deprived of their rights to insist further upon the objections they here make to the indictment, is certainly unfounded.

The explicit language of the act is a sufficient guarantee against such a consequence, and if it were not, the circumstances attending the removal would render it the obvious duty of the Circuit Court to see that defendants are not prejudiced thereby.

Upon the whole, therefore, I have come to the conclusion that I ought to direct the transmission of these indictments to the Circuit Court. An order for that purpose must be accordingly entered.

THE CASE OF MILLER.

We stated our belief, two weeks ago, from such facts as had then come to light, that the unfortunate Joseph C. Miller had been foully murdered. Subsequent developments have rendered it morally certain that this conclusion was correct. The friends and neighbours of Miller, who had known him for years, and who knew him to be a respectable, sober-minded man, whose circumstances were such as to make him attached to life, and whose principles as well would cause him to shrink with horror from such an act as suicide, would not believe that he had put an end to his existence in so singular a manner. And so far were they from being satisfied with the verdict of the Coroner's Jury, that the evidence then offered only served to confirm their previous conviction. Accordingly, they had the body exhumed, a second and a third time, and examinations made by physicians who wanted neither the ability nor the courage to ascertain and state the truth. The result was that the strongest evidence was discovered, first, that the deceased could not have committed suicide, and, secondly, that he was unquestionably *poisoned!* There can be no doubt, therefore, that the poor man was murdered, and then hanged that it might appear to be a case of suicide; and the authorities of Maryland made themselves accessories, after the fact, to the crime, and attempted, by a show of legal proceedings, to cover it up. Of the second and third *post mortem* examinations, and the facts revealed by them, a Philadelphia correspondent of the *Tribune* thus speaks:

The men who made the examination were Dr. J. W. Hutchinson and Dr. Dickey. On examining the neck, there was found no contusion, extravasation of blood, or injury of the blood vessels, as there must have been if his death had been produced by strangulation. The tongue was in its natural position, and not at all wounded, which is another proof that he did not hang himself. The stomach and bowels were found to be almost entirely empty, and in a highly congested, inflammatory condition. The villous coat was nearly destroyed. The vessels of the membranes of the brain were somewhat congested, and a small quantity of serum was found in the ventricles.

The physicians felt confident that poison had been pretty freely used, and that the hanging did not take place till after death. The muscles under the marks on the back of the wrists were very much contused, and there was considerable extravasation of blood. It is probable that these marks were produced by handcuffs.

The body, after this examination, was again buried; but such was the anxiety and excitement prevailing in the neighbourhood, that it was once more exhumed for the purpose of ascertaining, if possible, what kind of of poison had been used. The Doctors (Hutchinson and Dickey) analyzed the contents of the stomach and bowels, applying the usual arsenical test in a variety of forms, and in every instance revealed the presence of the poison.

There cannot, therefore, be the slightest doubt that the unfortunate man was killed by the administration of arsenic, and his body afterward hung to the tree where it was found. The supposition that he tooke the poison voluntarily for the purpose of self-destruction, and hung himself besides, is too preposterous to be entertained for a moment. No; the poison must have been treacherously or forcibly administered by other hands than his own; and the guilty parties, to screen themselves from the consequences of their crime, unquestionably placed the body in the position in which it was found.

Other circumstances corroborate this view of the case If Miller came out to Stemmer's Run in the cars, he must have arrived there at a comparatively early hour in the evening; and if he committed suicide, it is natural to conclude that he did so immediately afterward. Now there was a heavy rain during that night, but the clothing upon his body was found dry! How shall this be accounted for, except upon the supposition that the body was placed there by his murderers after the rain was over, when the poison had done its work, and they had had time to bring him, by some other conveyance than the railroad, from Baltimore? It is also stated, on reliable authority, that mittens were found upon Miller's hands. How could he tie the knot with such an incumbrance? And if he took the mittens off for that purpose, is it to be supposed that at the very moment when he was to launch himself into eternity, he would carefully replace them? The supposition is absurd.

Another fact should also be mentioned, viz.: that the railroad ticket which Miller purchased in Baltimore was found in his pocket after death; whereas, if he had gone to Stemmer's Run in the cars, it would have been delivered to the conductor before reaching that place.

We presume these facts have been presented to the notice of the proper authorities both of Pennsylvania and Maryland, but whether any action will be taken thereon remains to be seen. Webster Whigs and Bigler Locofocos may deem the murder as a legitimate fruit of opposition to the peaceful fulfilment of the Compromise measures, though that opposition may only go to the length of resisting the kidnapping of free children. But we shall see.

ANTI-SLAVERY CONVENTION.

ANNUAL MEETING OF THE MASSACHUSETTS ANTI-SLAVERY SOCIETY.

We refer to the letter of our Boston Correspondent, in another column, for an interesting account of the Annual Meeting of the Massachusetts Anti-Slavery Society, held last week in Boston. Not having received that letter till this number of the paper was nearly made up, the following report, communicated to the *Tribune*, was put in the printers hands, that our readers might not want some account of the meeting this week. A copy of the Official Report, for which we are indebted to Mr. S. May, Jr., is received, but unfortunately did not come to hand till our forms were about to go to press. We shall publish it next week.

MASSACHUSEETS ANTI-SLAVERY SOCIETY—ANNUAL MEETING, &c.

BOSTON, Wednesday, Jan. 28, 1852.

The Annual Meeting of the Massachusetts Anti-Slavery Society was held in this city, at the Melodeon. It convened this morning at 10 o'clock. The perseverance, self-devotion, faith in God, which characterize the men and women, the head and heart of this Society, enforce the justice of the tribute of admiration, at least, from those who do not agree with them in principle, and even from their most bitter enemies. Everybody knows where these men can always be found. They are the same yesterday, to-day and forever They at least are true, too, and have faith in their principles. The same men are around this platform to-day, who erected it twenty years ago. Can as much be said of any political party in the land? This constancy extorts respect from all classes. Some of our worldly-wise men might learn a lesson from this if they would deign. At the present time (I must tell the truth) the reports of this Society, as read this morning, show that it is no longer insignificant in point of numbers or influence, and no political or religious body in the land can afford to despise it. According to the report of the Treasurer, the receipts and disbursement of this Society amounted the past year to nearly $7,000, showing an increase from the preceding year of about $2,000. Whatever may be said by way of criticism of measures, this Society includes among its active working members some of the most learned, eloquent and wealthy men and women in New England.

Mr. Edmund Quincy, the Secretary of the Society, read a lengthy report of its proceedings during the past year, also setting forth the general aspect of affairs in this country in relation to Slavery.

Mr. Wendell Phillips, from the Business Committee, submitted some resolutions, severely censuring the authorities of the city of Boston, for surrendering Thomas Sims to Slavery, and condemning the course of Kossuth in this country for forgetting the slave, and praising those who hold slaves or apologize for slaveholding.

I will continue to give you a sketch of the proceedings of this Convention as it progresses. A. J. G.

BOSTON, Thursday, Jan. 29, 1852.

The first day's (yesterday) session of the Annual Meeting of the Massachusetts Anti-Slavery Society has closed, without much of special or unusual interest, except as usual. The speeches and discussions are earnest and interesting, judging by the number and appearance of the audience. The assembly was rather thin and meager at the commencement but it is now quite numerous.

Faneuil Hall has been secured for the meetings to-morrow. The principal speakers yesterday were Parker Pillsbury and Wendell Phillips. Pillsbury never speaks without pouring forth a flood of withering sarcasm, (upon whatever opposed him,) more terrible than the eruptions of Mount Etna. He has the power of making himself felt, whatever else may be said of him. Phillips is always welcomed by every audience. He is emphatically the people's *orator*, whether he is the people's Anti-Slavery representative or not.

Who can say that he will not be the exponent of popular mind a few years hence, as well as the recipient of substantial tokens of their gratitude and honour? May not the reason why the great men in this country are so capriciously taken up and cast aside consist in the fact that they do not aim to do the people a substantial benefit? They forget too often the injunction, to "seek first the kingdom of heaven," as the first and indispensable condition of all things being added. To abolish American Slavery would be a substantial benefit, felt by the entire world. Wendell Phillips is trying to do this for the world. A man must *do*, as well as *feel* for the people, if he would have his claims to patriotism recognised. There is a popular charm in these meetings. The following words of Emerson, written in reference to others, explain the reason why these meetings are interesting. Apply them to the speeches: "If," says Emerson, "a man is inflamed and carried away by his thoughts, to that degree that he forgets the authors and the public, and heeds this one dream, which holds him like an insanity, *let me read* his paper, and you have all the arguments, and histories, and criticism." In answer to the charge often brought against the party with which he acts, of keeping up a "rub-a-dub" agitation, and of being the "all-talk party," Mr. Phillips quoted the following extract from Daniel Webster's speech at the Kossuth Banquet: "We are too much inclined," says Mr. Webster, "to underrate the power of moral influence, and the influence of public opinion, and the influence of principles to which great men—the lights of the world and of the present age—have given their sanction. Who doubts that, in our own struggle for liberty and independence, the majestic eloquence of Chatham, the profound reasoning of Burke, and the burning satire and irony of Col. Barre, had influences upon our fortunes here in America?" Mr. Phillips says he accepts the name of "all-talk party," on the ground that public opinion is omnipotent, and that "the tongue is the father of public opinion."

A. J. G.

BOSTON, Friday, Jan. 30, 1852.

The meetings of the Massachusetts Anti-Slavery Society are increasing in numbers and influence from day to day. The discussions are growing warm and the audiences are now quite crowded. To-night the "Old Cradle of Liberty"—Faneuil Hall—will re-echo with sentiments of '76—the equality of all men, from the mouths of those who mean what they say—who profess to love liberty not only for themselves, but for all men, of whatever colour, caste, complexion or clime—who love liberty for the American slave as well as for the American serf. The following are some of the resolutions which have been under discussion for two days and evenings:

"1st. *Resolved*, That as citizens of Boston and the Common wealth we record our deep disapprobation and indignant protest against the surrender of Thomas Sims by this city, against its sanction of the cowardly zeal and lying policy of the police, its voluntary servility in behalf of the man-hunters, and its deliberate, wanton, and avowed violation of the laws of the Common wealth for the basest of all purposes—slave-trading—selling a free man into bondage, that State and Milk-streets might make money.

"2d *Resolved*, That the circumstances of the case will not allow us to believe that this infamous deed was the act of the City Government merely; and then as Boston-born men some of us comforting ourselves in the reflection that the fawning sychophant who disgraced the Mayor's chair was not born on the Peninsula whose fair fame he blotted, but all the facts go to show that in this, as in all his life, he was only the easy and shuffling tool of the moneyed classes, therefore too insignificant to be remembered with any higher feeling than contempt.

"3d. *Resolved*, That we cherish a deep and stern indignation toward the Judges of the Commonwealth, whose personal cowardice, pitiful subserviency, utter lack of official dignity, and entire disregard of their oaths, witnessed in silence the violation of laws they were bound to enforce, and disregarded the Bench once honoured by the presence of a Sedgwick or a Sewall.

"4th. *Resolved*, That we do not forget, in estimating the character of the professed Churches of Boston, that through this dismal and melancholy night of infamy, they upheld a merciless people in the execution of an inhuman law.

"*Resolved*, That in the rescue of Shadrach, the manly and successful resistance to Gorsuch and his bloodhounds, and the noble attitude of the city of Syracuse, we see cheering evidence that the love of Liberty and the reverence for Law have not died out in the land.

"*Resolved*, That, when we consider the critical state of parties and the public mind in relation to Slavery, the fearful struggle going on between the principles of Liberty and those of a merciless Despotism,—the friends of the one being a Spartan band, those of the other a Persian host; when we consider also the anxious expectation with which the coming of Louis Kossuth was watched, the momentous weight attached to the lightest word, his eloquent professions of devotion to the principles of impartial liberty, and to be governed by the higher law of humanity and universal Freedom, and his position as the recognised leader of one-half of

and the ball which passed through the child's neck, cut off one corner of the mother's ear. At this moment the mother fell down with her lifeless babe, when she was rushed upon by two white men who commenced trying to bind her with ropes, but when she cried for help her husband came to her relief. The contest was desperate for a few moments; the wife and husband both fought until they brought down one of the party, and his companion fled and left him. The husband and wife fearing that they would soon be surrounded and overpowered, and seeing that their little one was dead, and that they could do it no good, they reluctantly left it lying by the villain who shot it. Fortunately for them, they soon found a depot of the underground railroad, and one of the conductors thereof was kind enough to put on an extra train, which soon landed them on a soil where "no slave can breathe." We deeply sympathise with them in their bereavement, while we think it would be far better that ten thousand children should perish by the way-side, than for one to be taken back into Southern Slavery.—*Voice of the Fugitive.*

Domestic Correspondence.

FROM OUR BOSTON CORRESPONDENT.

NO. XCVI.

THE ARGUMENT.—*The Massachussetts Annual Meeting—Where held—Idiosyncrasies of Halls—Faneuil Hall granted again—The Abolitionists triumphant over Mr. Webster—The Old Board—How they "dirtied themselves for nothing"—The Correspondent episodizeth touching Whitefield and Revivals—His opinions of Revivals—How they have been stopped—His means of knowledge—Whitefield, Father Flynt, Tillotson and hell-fire—The Board of Overseers—Change in Constitution of—Wendell Phillips proposed—Who chosen in his stead—Legal Comment—The Correspondent returneth to the Annual Meeting—The Speakers—The subjects—Faneuil Hall—Mr. Garrison and Colonization—Mr. Phillips and the last Mayor and Aldermen—"The Monkey in convulsions"—Defender of Mr. Webster—Conclusion of the whole matter, &c. &c. &c.*

BOSTON, Feb. 2, 1852.

We have just despatched our Annual Meeting, and a very good one it was. For one thing, we were in the Melodeon, a place much better suited to our purpose than the Tremont Temple, both from its situation, its size and its associations. It is in the grand thoroughfare of the city, it is not too large, and it is redolent of the Sunday service of Theodore Parker and not of Nathaniel Colver. The attendance was very good, beginning small, as usual, but swelling up to Faneuil Hall-full before we were through; for we did have Faneuil Hall this time. New lords, new laws. The Bigelow dynasty, with his whole train of Alderman, having been swept away, and Mr. Seaver reigning in his stead, by the Grace of One Vote, we had our own again. We were there before Daniel Webster himself, poor man! What will become of the Union when its Saviour is thus set at nought, and its avowed enemies exalted over him? That Board has made itself historical by its catching, and holding, and sending back of Sims, in defiance of the laws of the land, by its ill-timed consistency in refusing the Hall to Mr. Webster because they had refused it to Garrison and Horace Mann, as if that had been any reason! And then by their going on their bellies and eating dirt to pacify the great man, when they found out their mistake, and having their heads bruised for their pains. Wendell Phillips told a story *apropos* to the merchants of Milk Street and State Street, who volunteered to help send Sims back, that they might make money, and then didn't make it after all, which will apply equally well to these worthies. A negro went to hear Whitefield preach, and, when he came upon the ground, threw himself down and went through the various contortions and rollings-about which were the signs that his ministry was effectual, when somebody coming up told him that IT WAS NOT WHITEFIELD that was preaching!—"Then," said the sable neophyte, picking himself up, "*I have dirtied myself for nothing!*" They, too, dirtied themselves for nothing!

Talking of Whitefield, I suppose he was the first person who introduced the institution of Revivals of Religion into the Country. People, before that, were content to be saved in a regular way, *secundum artem*, and put through by their own ministers in a decent and orderly manner. The good parsons of a hundred years ago liked not the interference of this *foreigner* with their spiritual affairs, any better than a comfortable Doctor of Divinity in a quiet parish relishes the advent of a starveling Evangelist, like Burchard or Elder Swan. It is an interference with their monopoly and seriously disturbs the course of their business. It even obliges them to kindle a back fire to counteract the interlopers. As a Reverend friend of mine, of Orthodox eminence, who has recently gone to Heaven (or the Antipodes, as the case may be) told me once, that when he was settled over a country parish, if there were symptoms of a Revival, he kept it back as long as he could; but when it got beyond his control, he then took the lead in it, so as to keep it in order! He made the Holy Ghost behave itself, within his jurisdiction. Indeed, this is nothing at all to be wondered at, when we have known repeated instances, vouched by the highest clerical authority, in which the Holy Ghost has incontinently taken to flight at the mere sight of an Anti-Slavery lecturer. The mere sight of one of those varlets, say Pillsbury or Stephen Foster, walking up the street of a village, enjoying the outpourings of the Spirit, with a carpet-bag full of A. S. publications and a *Liberator* in his pocket, has over and over again grieved away the Spirit and clapped a perfect wet blanket on a Revival of the very strongest kind. Therefore, a potent man, like my *quandam* friend, would be a Real Blessing to any rural district where his lot might be cast. I speak on the subject of Revivals with entire authority, having been through *three* myself, where, after the most straightest sect of our religion, I was brought up at Andover, and sat at the feet of the sainted Stuart. That I take to be one reason why I am so much better than my neighbours.

To return to Whitefield, I remember hearing a story which illustrates this feeling of the clergy towards him. Soon after his arrival here, he was invited to dine at Cambridge, with the College authorities One of these was the Reverend Henry Flynt, who was connected with the College for the first half of the last century, as Fellow and Tutor, and was always known as Father Flynt. After dinner, the conversation turned on the English divines of distinction, and, among others, Archbishop Tillotson was introduced into it. Now, Dr. Tillotson, though a churchman and a prelate, was well thought of by the Puritans and the New England clergy for his friendliness towards them and the part he took in the relief of the Dissenters, at the beginning of the reign of William and Mary. "Pray, Mr. Whitefield," said some one, "and what do you think of Archbishop Tillotson?" "Think of him!" roared Whitefield; "I think that he's *burning in hell-fire!*" "Ah, indeed," quietly responded Father Flynt, "I really don't think *you'll find him there!*" I have a horrible suspicion that I have told you this story before in some of my invaluable epistles. But no matter, it is good enough to be repeated

Another thing *apropos* to Orthodoxy, a subject on which I am perfectly competent to speak. You must know that, last year, the Legislature made an alteration in the Constitution of the Board of Overseers of Harvard University, providing that a certain number should be elected annually. One reason given for the change was that the Board before, electing its own members, an undue proportion of Unitarians had crept in—a circumstance which, if true, was certainly counterbalanced by the fact that the Governor, Lt. Governor, Council, Senate, Speaker and the House, were members *ex officio*, considerably preponderating over the permanent Board, and might choose persons of any kind of religion they pleased. But so it was, and this year they proceeded to parcel out the vacancies among the different sects. As if the object was to have an equal number of each sect represented, instead of having the best men for the place chosen out of any sect or no sect. But there was not only religion but politics to be consulted, and the nominations were arranged in Democratic and Free Soil Caucuses. I do not mean to say that they were equally divided between the two; but that this was the way in which the names were selected. The Free Soilers sent up to the Democrats, as their Orthodox candidate, the name of WENDELL PHILLIPS. A better choice they could not have made as far as qualifications for the place are concerned, and his Orthodoxy is beyond cavil. But it did not suit, and whom do you think they chose in his stead? General CALEB CUSHING, the hero of the Ditch at Matamoras, who, finding, as Hosea Biglow says,

"He hadn't no monopoly to court the *Seenorestus*."

came home and joined an Orthodox Church in Newburyport, through the doors of which he walked straight into the Board of Overseers. An eminent member of the Boston Bar, hearing of the substitution of General Cushing for Mr. Phillips, observed, wittily (though, perhaps, a trifle profanely), "they said, like the Jews of old, '*Not this man, but* BARABBAS!'"

Perhaps it is about time to go back to the Annual Meeting, from which I started several paragraphs back, and have meandered, the Lord knows how, to Orthodoxy and Caleb Cushing. It was one of the very best meetings we ever held. The quality of the speaking was never surpassed at any one; and there was less of the *boring* which is too often the price we have to pay for Free Discussion. The poor insane woman who haunts all public meetings made one frantic harangue at the close of the first evening, but was humanely excluded from the other sessions. Mr. Phillips never surpassed the speeches he made on this occasion.—Messrs. Garrison, Pillsbury, Whiting, S. Johnson, Daniel Foster, W. H. Fish, Miss Stone, and many others, spoke with much effect. The case of Kossuth occupied, naturally, a good deal of attention, But you will have the proceedings and the substance of the speeches, about as soon as you will get this Our last session, Friday evening, was in Faneuil Hall. Some anxious friends had doubted whether it were best to occupy so large a place, especially as the weather was bad. But we proved the wisdom of our choice The Hall was filled. The galleries were entirely occupied by ladies, and the floor by men. Of course, the audience was miscellaneous, but, on the whole, attentive. Mr. Garrison opened with a scathing exposure of the Colonisation Society, proving it to be a cruel imposture out of its own mouth. Mr. Phillips followed on the conduct of the City Government in the Sims matter, in which he showed no mercy to Mayor Bigelow, Marshal Tukey and the other conspirators. Comparing the eloquence of Harrison Gray Otis with that of Rufus Choate, he said that the latter, on the occasion of the Webster Convention, reminded him of nothing so much as "A MONKEY IN CONVULSIONS!" A description of the orator which, I rather think, will stick to him while he lives. But you will reprint his speech, I hope, and so will not mangle it, from my recollections.

When he was done a young man of the name of Drake, I think, rose to defend Mr. Webster and defended him perhaps as well as any one could. He had not much to say, to be sure, except he himself was a pro-slavery loco-foco democrat, who would not hear Mr. Webster abused, though he would not vote for him. His talk and his gesticulations were too much for the audience to endure and the roar of fun could not be restrained. And especially, as a gentleman whose opinion of his own oratorical powers differs from that of the public in general, and whose appearance is the certain signal of disturbance, if any element of it exist in the meeting, persisted in mounting the rostrum. After this the b'hoys were neither to hold or to bind and the meeting came to an end, after passing the resolutions, in a very small imitation of the Bigelow and Tukey Riot of the 15th of November, 1850. However, all of Mr. Garrison and Mr. Phillips' speeches were heard, and, had Mr. Pillsbury or any other speaker of power, taken the platform, after Mr. Phillips, I have no doubt that all would have gone off quietly enough.

—D. Y.

Miscellaneous Items.

ADDRESS

TO THE PEOPLE OF THE STATE OF NEW YORK.

FELLOW-CITIZENS: His Excellency, the Governor of our State, in his recent annual message, is pleased to say of its coloured population, that "their anomalous position undoubtedly forms one of the most serious obstacles to the gradual liberation of the slaves. * * * Debarred from all participation in public employments, rejected from most of the institutions of learning and religion, governed by laws which they have no share in framing, having been denied the right of suffrage by a vast popular majority, shut out from social intercourse and condemned to a life of servility and drudgery, their condition amongst us is deplorable in the extreme. Any great improvement of their condition, under circumstances so calculated to crush the spirit of manhood, seems morally impossible.

"The blighting effects of this inferiority to which they are subjected is seen in the fact, that while every other class has rapidly increased, the coloured population of this State has dwindled from 50,027, in 1840, to 47,937 in 1850. A result so remarkable naturally excites apprehensions that the African, like the Indian race, cannot permanently co-exist on the same soil with the whites, and that a separation is necessary to prevent their ultimate extinction. * * * The instincts of nature, too powerful to be counteracted by the refinement of abstract reasoning, proclaim that the two races must be sooner or later separated."

The Governor further recommends a "liberal appropriation" by the Legislature, to remove this class to Africa, under the auspices of the American Colonisation Society.

Had these animadversions come from the agents of the American Colonisation Society, we should have borne them in silence, for 'tis their vocation, and we have become accustomed to give indirect support to an army of adventurers, who gain their living by plundering us of our good name; but when the chief officer of our State, in the fulfilment of the constitutional duty of rendering an account of its condition to the Legislature, makes these assertions, they assume the prominence of historic truths, and appear before the world and posterity with an authority which will win for them the common belief, if they be permitted to pass uncontradicted.

We feel and know that these animadversions misrepresent our condition and prospects, and are unwilling that they shall mould the public opinion in regard to us. And it is out of regard for this public opinion, fellow-citizens, that we are assembled this day, in the hope that, by a respectful presentation of facts and arguments, we may do something to win back for ourselves the good name which the Governor has so seriously impugned. And, whilst we yield to none of you in our high respect for his office, this very respect will not suffer us silently to permit his exercise of it to be used to our detriment; for if the representations made by his excellency were true, or but half the truth, we feel within us a love for our native State so deep and fervent that we would, however reluctantly, quit her borders for ever, rather than remain an impediment to her greatness and her glory.

We are not "debarred from all participation in public employment." In proportion to our attainments and efforts to secure the same, we obtain and hold the public employments. Coloured men have ever been employed in government vessels; coloured men have always been employed in the public stores in New York, until the tender mercies of a Whig administration dismissed them all, except such as the exigency of the public service could not spare. Coloured men hold offices in the gift of the people in Essex county, in this State; have refused office in Oneida, and have been nominated, and received a fair share of votes for the highest offices in the gift of the people of the State; and if they have failed in being elected to such offices, it may, perhaps, be attributed less to their demerits than to the peculiar avidity and denial of self with which our white fellow-citizens seek such incumbencies.

If we are rejected from most of the institutions of religion and learning, it is from influences apart from our complexion, and from without our State. In 1837, 1839, and 1843, when coloured youth, duly qualified, were rejected from equal privileges in the Protestant Episcopal Theological Seminary in this State, solely on account of their complexion, the Bishop of the Diocess gave as the sole reason for such rejection the fear of a commotion in the Episcopal Church in the Southern States. In 1846, when a coloured student, duly qualified, was presented for admission to the College of Physicians and Surgeons in the city of New York, he was denied admission on account of the anticipated opposition of students from the slave States. In the autumn of 1851, when a coloured student had been promised admission into the Medical School in Albany, he was rejected on account of the opposition of a medical student from the South.

In all these instances, the professors in these seats of learning expressed with profound regret that their pecuniary dependence upon the Southern students was the sole reason for thus making a rejection, repugnant to their own feelings, and to local opinions.

Hence it appears that Southern young men, arrogating to themselves the title of gentlemen, who, in infancy, had drawn nutriment from the breasts of black mothers, the cost of whose bringing up—nay, the very clothes upon whose backs are paid for out of the unrequited toil of black men and women, have come into the free State of New York, and succeeded in closing these seats of learning to coloured men, in order to make capital for perpetual Slavery out of the necessary ignorance of free persons of colour. And so far from our exclusion from these seats of learning being an argument against the portion of freedom which has been vouchsafed to us, it is palpable proof of the chains which the South has forced upon men of science and sanctity in our State.

On the other hand, with the exception of the bad eminence held by the Protestant Episcopal Church, as a respecter of persons, all other denominations in our State either have widened or gradually are widening their platforms to the breadth of that humanity which the Saviour came to save. The Presbyterian church have coloured men approaching their altars, and ministering thereto, have them in their presbyteries and synods, and cordially throw open the doors of the Union Theological Seminary to properly qualified coloured youth. The Catholic Church, true to her ancient and not inglorious traditions, holds its members equal, regardless of complexion—coloured clergymen have ministered its sacred rites in the city of New York; her edifices have no caste pews, and there is no coloured Catholic church in the United States, nor in the world. The Baptist church is equally catholic in these respects. The African Methodist Church in our State grew into a separate institution under the influences of Slavery; its continued separation is a matter of extreme regret among the whites of the same persuasion, who have made overtures for a union.

We respectfully submit, therefore, that with a single exception, we are not excluded from the seats of religion. Even in the case excepted, some years ago, when the vote was taken, indirectly, in the Diocesan Convention, the growing catholicity of the clergymen gave a majority in favour of the admission of coloured churches to the Union, and this union was only lost by the malinfluence of a distinguished layman from Albany, who had been deeply engaged, some thirty years before, in an ingeniously contrived slave trade between New York and New Orleans

We learn with extreme surprise from his Excellency that "we are governed by laws which we have no share in framing." To our humble apprehension, it had ever seemed clear that a government of the people was carried on, both in the framing and the executing of the laws, when such people elected representatives, or other officers for those purposes; and that each voter framed laws through his representatives. If this theory be true, we have helped frame the laws of New York ever since the foundation of the State. To an extant as full as any portion, and fuller than a majority of its present population, do we claim "the grateful memories and patriotic hopes suggested by the seventy-fifth annual session of the Legislature of New York;" for our fathers were among those who opposed their breasts to British bayonets in defence of those who framed the first constitution, at Kingston, in 1776. And from that day to the present, free coloured men have enjoyed the right to vote, on the basis then granted them, in common with all the citizens of the State. The basis of this vote is a property qualification, so small in amount that every coloured man who chooses may become a voter; four-fifths of the adult coloured natives of this State are now entitled to vote under it; and our efforts to remove this qualification have arisen less from the fact that it excludes us from the franchise, than from our unwillingness to see the otherwise glorious escutchon of our State marred by an unrepublican blemish.

Hence, fellow-citizens, nearly to the fullest extent, during three-quarters of a century, through the perils and through the glories of our native State, have we, side by side, uttered along with you the silent but potent voices which have framed for the Empire State her unrivalled system of internal improvements, her modern system of laws, her gigantic enterprise, and her noble system of common education. And may we not be forgiven the expression of the hope, that whilst New York lasts—and may she last for ever—our children and our children's children shall share, and share alike with yours, whatever fate an Almighty Providence may have in store for her.

We have laboured under the impression also, that the Governor of the State occupied a not unimportant position in relation to the framing of the laws. And we would respectfully submit, touching the present incumbent, whether the fact that he was elected to office by the vote of coloured men in Kings county, cast for him in the belief of a liberality of sentiment on his part touching the Fugitive Slave Law, should not have left a more lively, if not a more grateful, impression upon his patriotic memory?

We may be excused from sympathising with his Excellency's manifest grief at our being "shut out from social intercourse," for the reason that we do not feel that we labour under any such exclusion. In our humble way, we interchange the amenities pertaining to civilized society, with the sincerity and frankness, if without the expensive splendour, which distinguish them in other quarters. It may not be within the experience of his Excellency, but we can assure him that it is a possible and tangible experience from which we need no longer be excluded, that social intercourse can exist apart from the class of our fellow-citizens who monopolize the higher offices in the gift of the people.

But, if by social intercourse, he means the social intercourse of coloured and white persons, whilst it must be admitted to be a novel definition of the term, such a thing does exist even in our own State. And in order to relieve the Executive anxiety on this point, we beg to state that, in parts of Essex, Franklin, Oneida and Madison counties the courtesies of social life are not proscribed by complexional distinctions. And in the cities of New York and Williamsburgh, intermarriages between the "two great races," have become so frequent as to interfere with the usual classification in census-taking. And it may be worthy of remark, that our general deprivation of mixed social intercourse, is a matter of which we would have remained in tranquil, perhaps in blissful ignorance, had it not been repeatedly thrust upon our attention by the American Colonisation Society, its aiders and abettors.

His Excellency also asserts that "condemned to a life of servility and drudgery," our "condition is deplorable in the extreme, and that any improvement under circumstances so calculated to crush the spirit of manhood, seems morally impossible."

Throughout the State of New York, coloured men are occupied, or employed, as farmers, blacksmiths, engineers, carpenters, shoemakers, merchant tailors, professors, clergymen, editors, teachers, physicians, lumber dealers, in short, every calling, except the highly salaried offices of Government; how far the last named employment may condemn a man to a life of servility and drudgery, we cannot say from experience, however distinct may be our opinion derived from observation. In regard to all the other occupations, we say, because we know, that they bind no chains upon our persons nor upon our souls. The earth yields her increase as gladly to the toil of black farmers as of white; and in this, as in other callings named, if we have won less money, we have at least maintained the same spirit which has accrued to our fellow-citizens with fair skins.

The cities of New York, Brooklyn and Williamsburg, contain more than a third of the entire coloured population of the State. A hurried investigation, in which many instances have been overlooked, and all the estimates rendered low, shows that coloured persons have invested in business carried on by themselves—

In New York city,	$755,000
In the city of Brooklyn,	76,200
In the city of Williamsburg,	4,900
Total,	$839,100

And that, apart from business, coloured persons hold real estate, deducting incumbrances—

In the city of New York,	$733,000
In the city of Brooklyn,	276,000
In the city of Williamsburg,	151,000
Total,	$1,160,000

And these sums are distributed among a large number of individuals, engaged in business or holding real estate, no account being taken of personal property.

Twenty years ago, the same class held in these cities:

Real estate,	$350,000
Business investments,	511,000
Total,	$861,000

That is to say, while this population has increased twenty-five per cent., its wealth has increased one hundred per cent.

As to the condition of the masses of our population in these cities, we adduce the respectable authority of the *New York Tribune* for the statement, that coloured beggars are extremely scarce in New York, except such as come from the South, asking money wherewith to buy their own muscles, blood and bones."

By the second annual report of the governors of the Almshouse of New York, for the year 1850, it appears that there was expended by them during that year—

For the poor generally,	$406,642 60
For the coloured poor, to wit—	
The Coloured Home	$7,664 58
Coloured Orphan Asylum	2,607 13
Total,	$10,271 71

The Coloured Home and Orphan Asylum contain all the coloured poor, dependant on public support, with a very few exceptions. From the above, it seems that one-fiftieth of the amount expended, has been for the coloured poor. In New York city, the coloured population to the white, fairly estimated, is as one to 25; hence the coloured population of that city are 27 per cent. less burdensome than is the white population, to the poor fund. And this happy state of things has arisen, in part, from the fact that the former class have mutual benefit societies, with a cash capital of $30,000, from which they take care of their sick and bury their dead.

It is further proof of the improved condition of the coloured population, in the city of New York, that the proportion of deaths among them decreased, gradually, from 1 in 22 in 1821 to 1 in 41 in 1845, which latter has been about the proportion since the last date; and statists agree that the mortality of a people is always a fair measurer of their comforts.

The sending of children to school is a fair test of the intelligence of a people. During the year 1850, there were 8,398 coloured children in attendance in common schools, in New York city, which is nearly the same proportion as there were white children attending the same class of schools.

In reviewing these facts, it must be borne in mind that but one quarter of a century has elapsed since a large portion of the coloured population of New York has been freed from Slavery; and that during the earlier portion of this time, the very possession of the newly-gotten freedom had in it an enjoyment so full and perfect, that the getting of money became a secondary consideration, to say nothing of the dependant and thriftless habits which Slavery had engendered. Nor should it be forgotten, that during the same fourth of a century, we have borne the brunt of competition, with a flood of emigrants from the old world; for nearly all such emigrants were immediate and direct competitors in our callings, having on their side the odds of complexional sympathy and political influence from the moment of their landing upon our shores.

May we not be permitted, fellow-citizens, to express some degree of pride in the fact that we have not merely survived, but also surmounted all these difficulties, with peace, comfort and growing prosperity; and may we not also be suffered solemnly to protest against the false witness borne against us by the chief magistrate of the State, when, with these facts at his command, he has pronounced our condition deplorable in the extreme, and incapable of any improvement? In the matter of tolls or canal loans, his Excellency doubtless consulted the records before announcing their condition to the Legislature. Then, surely, where the well-being, the rights, and the "good name" of fifty thousand of the citizens of the State were involved, it was but just that he should have been well informed before publishing such broad and decided views in regard to them, for if this class was of sufficient importance to merit any notice in his annual message, it was also of sufficient importance to have been spoken of within the limits of the truth, carefully ascertained

The only fact in regard to our condition which his Excellency announces with the authority of statistics, is, that we have dwindled from 50,027 in 1840, to 47,987, in 1850; and in the expressed fear "that the African, like the Indian race, cannot permanently co-exist on the same soil with the whites, and that a separation is necessary to prevent their ultimate extintion," the Governor recommends to the Legislature a "liberal appropriation" for the purpose of removing the people of colour to Liberia. It is not a little remarkable that his Excellency, labouring under a fear lest we should become extinct, has recommended the very means by which that extinction may be most speedily compassed. The removal from his home, from the graves of his forefathers, is a cause which has so dreadfully thinned the ranks of the red man, in his sad and reluctant march towards the setting of the sun. And, if we may rely on the assertion of the Governor that 10,000 coloured Americans, in all, have been sent from the United States to Liberia, this fact, taken in connection with the recent census, which gives Liberia 6,588 coloured American residents, in 1851, after a twenty years experience of that direful climate, it follows that the 50,000 coloured people of New York would be reduced to 31,790 within the next twenty years, should they emigrate to the African coast.

Again, the census of 1850 shows that Montgomery county, State of New York, has dwindled from 35,818 in 1840, to 31,913, in 1850—a loss of more than eleven per cent. We cannot perceive the arithmetic, nor the logic which prevented his Excellency from very urgently recommending to the Legislature an appropriation for the removal of the inhabitants of Montgomery to whatever part of the world any portion of their forefathers may have come from, in order to prevent an extinction that seems twice as imminent as that of the coloured citizens.

But we are of the belief that the coloured population of the State of New York has not diminished in numbers since 1840; that, on the contrary, this population now numbers 55,029; and for the following reasons—

1st. Whilst the census of 1850 may have been taken with much accuracy in the general enumeration, it is most unreliable in special classification. For example, the returns of mortality for the year 1850 range, in the several States, from 1 death to every 47 to 1 to every 282 persons. These returns are so contrary to the well known laws of longevity that they are entirely unreliable, except for the single State of Massachusetts. The mortality set down for the State of New York is 1 death to 99.85 persons, which is, at the very least, twenty per cent too low. It is a fair inference that the same census takers who have made so gross an error in this speciality, have also made an error in the number of the coloured population. In confirmation of this view, it may be stated that one of the Marshals, in Williamsburgh, made no separate enumeration of the coloured population, which is not small, in that city.

2. The influence of climate, intermarriages, and illicit intercourse, in whitening the complexion of the coloured population; and the natural desire of those of this class, of fairer hue, to be ranked among white citizens, render the task of classification on the basis of colour, an extremely difficult and dangerous one; hence numerous instances are known in which fair complexioned coloured families have been set down as white.

3d. The movement of the coloured population of the State of New York, since 1790, has been as follows:

			Inc. p. c.
Colored population in	1790.	25,978	—
" "	1800.	30,717	18
" "	1810.	40,350	31
" "	1820.	40,068	—
" "	1830.	44,870	12
" "	1840.	50,027	12
Estimated	1850.	55,029	12
Stated	1850.	47,987	—

The rapid increase up to 1810, arose in part from importations from Africa; the decrease thence to 1820, arose from the removal from the State of some 5,000 slaves, by their owners, who sought thus to escape loss by the act of emancipation which was passed in 1816 From 1820 to 1840, the increase of this class was steadily 12 per cent per annum. This may be set down as a steady and normal increase, for any population in comfortable circumstances, as it differs from the increase of the people of England, for the same time only 0 18 per cent, less than one fifth of one per cent.

And unless some disturbing cause occurred, the laws of increase fix inevitably the coloured population of 1850 at 12 per cent higher than that of 1840. No such disturbing cause has occurred; fecundity has not been arrested; their mortality has gradually lessened; no marked emigration had taken place, up to June, 1850, when the census was taken, although since the passage of the fugitive slave law in September of that year, some two thousand of the self-emancipated have gone to Canada.

The enlightened State of New York has for a motto "Excelsior," and, therefore, cannot look down towards the acts of Indiana in search of example. In New York, while one in fifty-three white adults (including a vast and illiterate emigration) cannot read and write, in Indiana one in seventeen cannot read or write; hence Indiana has but one third of the intelligence of New York, and Indiana, cherishing among her patriotic memories "the inglorious flight even to Saltillo," may be excused for expressing her dislike to men with coloured skins, by a large popular vote forbidding their immigration. Even so, had our Governor been disposed to look at the coloured man in any other than a malign view, he might have gleaned, from the history of Ohio, that, by this very vote, Indiana has probably bid for a large increase of her coloured population.

In 1820, Ohio, with a coloured population of 4,723 passed her black laws, which were even more stringent than the recent constitution of Indiana against coloured immigration. In 1850 we find Ohio with a coloured population of 24,300; and this population of such weight and influence as to have caused the repeal of the black laws aforesaid.

Or, his Excellency might have glanced at our neighbouring State, Massachusetts, in which equal franchise, from the foundation of the State, has resulted in raising coloured men to the various trades and professions, including the administration of the laws, and has further caused the abolition of an old law, which forbid the intermarriage of blacks and whites.

In Canada, also, there is civil, social, and political equality between the white and the black man, and his Excellency cannot be ignorant that the instincts of the black man have carried him thither. Whilst the American Colonisation Society, with enormous outlay of some three millions of dollars, has succeeded in planting a colony, now numbering some six thousand coloured Americans, on the coast of Africa; five times that number, that is to say, thirty thousand coloured Americans, have voluntarily colonized themselves in Canada, and are become, to the fullest extent, part and parcel of the State.

His Excellency is pleased to proclaim that the "instincts of nature, too powerful to be counteracted by the refinements of abstract reasoning, proclaim that the two races must be, sooner or later, separated." A Hibernian philosopher had the acuteness to discover that mental state in which a man

"Meets with a friend,
And for love knocks him down."

But it has been reserved for Governor Hunt to trace out the new psychological fact; that the very large admixture of the "two great races" in the United States is the result of instinctive antipathy. The term "coloured," popularly applied to us, proves that we are no longer, in appearance or race, pure Africans. Forty five years have elapsed since the foreign slave trade ceased; to-day, of the 3, 612,899 slaves and free coloured in the United States, apart from those actually born in Africa, it is more rare to find persons of pure African descent, than to find among the white persons of pure French, or German, or Irish descent.

Our fellow-citizens of the South, whose experience about these "instincts of nature" cannot be questioned, earnestly favour a perpetual union of the "two great races," and even cling to this union as something more desirable than the union with the white States of the North, looking forward to the time when the want of the first named union shall peril the peace and the prosperity of the North, they chivalrously promise to bring their mixed population, *vi et armis*, to reduce the unhappy North to a becoming state of social order and intercourse. (Letter of John C. Calhoun, *New York Herald*, Jan. 18, 1852.)

The vote of this State, denying us equal franchise, was not an expression of popular antipathy. Had there been such antipathy, it would have wrenched from us all right to vote. The question decided in 1846 was a political one. We have ever been known as staunch Whigs. Hence the Democratic party, with a few noble exceptions, voted against adding to the Whig ranks voters who would have secured the Whig preponderance in the State. About the city of New York, the Democrats added to their vote against us, by representing that our enfranchisement would seriously interfere with the employment of the labouring population. And, in the next, the dreadful murders committed by an insane man of colour, was made an effective weapon against us.

And now, fellow-citizens, we are done. It is a grave thing for men, in the quiet pursuit of their lawful avocations—men who have neither burdened the State by their improvidence, nor disturbed it by their importunity—for these men to be suddenly summoned—in the midst of a most inclement season, at a distance from their homes, to show cause why they shall not be removed, as a common nuisance, from their native State.

Such, in plain words, is the amount of the statements and the recommendation of the Governor.

We have endeavoured to the best of our humble ability, to show that his statements are incorrect, and we earnestly and solemnly protest against the adoption of his recommendation, to appropriate funds for our removal to Africa, or anywhere else.

First—Because the appropriation is unconstitutional. The 10th section of the 7th article of the constitution states, that "the credit of the State shall not in any manner be given or loaned to, or in aid of any individual association or incorporation." The American Colonisation Society is an "association" foreign to the State, and unknown to its laws. By granting no matter what sum to that society, the good faith of the State would be pledged to the cruel and monstrous doctrines on which that society is founded—that a man has no right to live in the land of his birth.

Secondly—Because such appropriation is entirely unnecessary. Of the coloured population of this State, there are not fifty persons, all told, who desire to emigrate to Africa. Even the New York and Liberia Agricultural Association, no longer held together by the cohesive power of eleemosynary plunder, is organized to send other persons to Africa.—other persons having been coaxed up for the purpose of lining the pockets of the members of the association.

We need no State appropriation? should it ever occur that we shall be called upon to leave our native State, having means of our own, we shall not burden the public fund in our departure, any more than we do while remaining at home. In consulting the mysteries of Providence, touching such departure, and with his face turned toward the East, our worthy chief magistrate has not been vouchsafed the true reading of the auguries: *Intonuit laevum:* the road is short to Canada; from whose fertile fields and equal institutions, we might be permitted to witness the prosperity of that State, which, in giving us birth, has entwined in its common weal every fibre of our being; this would take away half the bitterness of our exile, and would leave us the privilege, should peril come to her, of bareing our breasts of black men as a shield to whatever blows might be hurled against the heart of the Empire State.

Thirdly—We protest against such appropriation, because the American Colonisation Society is a gigantic fraud, professing to love, while it systematically encourages hate among mankind; professing to liberate the slave, whilst it welds more firmly the chains of the enthralled; professing to give peace whilst it is the last stronghold for the organized disturbance of the entire Union; professing to evangelize Africa whilst it hurries to its shores a population which has the best reason to hate Christianity which sends them there; with no other merit than that of a cold, crafty, implacable hater of the coloured Americans; it pushes its Jesuit head among high and low, a moulder of, and profiter by a diseased public opinion, it keeps alive an army of agents who live by plundering us of our good name

And lastly—We protest against this appropriation, because "we remember them that are in bonds, as bound with them;" bone of our bone, and flesh of our flesh, may evil betide us when the hope of gain, or the fear of oppression, shall compel or persuade us to forsake them to the rayless gloom of perpetual Slavery.

Adopted by the State Convention of Coloured Citizens in the City Hall, Albany, Jan. 20th, 1852.

J. W. C. PENNINGTON, Pres't.
HENRY HICKS, WILLIAM MATHEWS, } Secretaries.

——THE COLOURED PEOPLE OF OHIO IN CONVENTION.—*The Cincinnati Gazette* contains a report of the proceedings of a State Convention of the Coloured People of Ohio, in session at Cincinnati, on the 15th instant. Letters were read in the Convention from B. F. Wade and I. D. Campbell, the first a member of the U. S. Senate and the latter of the House of Representatives from the State of Ohio. Both letters were kindly Mr. Wade advises the coloured people to withdraw from all menial employments, and form themselves into communities, where by cultivating the soil and exercising the mechanical arts, they may attain to independencies, and thus overcome the prejudice against their race, by proving that it has no foundation in truth or justice. Mr. Campbell thinks the present position of the coloured race is infinitely worse than it was ten years ago, and he sees nothing flattering in their future prospects. He advises them, however, to prepare for the worst by becoming good and useful citizens, by habits of industry, by building up institutions of learning, which will disseminate knowledge among, and thus increase the power of the coloured race.

A lengthy letter was also received from Hon. Horace Mann, in which that gentleman says:

I believe there is no real conflict of interests between the races. The eternal laws of justice would promote the welfare of both. If either whites or blacks resist these laws, it will deserve, and must ultimately receive, an avenging retribution. The coloured race of this country now numbers four millions of people. More than three-fourths of this number are in the lowest civil and political condition known to the human race.

As to your future prosperity: In the first place, I think it neither propable or desirable that the African race should die out and leave that part of the earth to which they are native, to the Caucasian or any other race As compared with the Caucasian race, I suppose the African to be inferior in intellect, while in sentiment and affection the whites are inferior to the blacks. May not independent nations of each race be greatly improved by the existence of independent nations of the others? I believe so. I believe there is a band of territory around the earth, on each side of the equator, which belongs to the African race. The commotions of the earth have jostled many of them out of their place; but they will be restored to it when reason and justice shall succeed to the terrible guilt and passions which displaced them.

Mr. Mann proceeds, with great vigour and clearness, to urge upon the blacks the vital importance of the accumulation of property, support of the best schools, the cultivation of refined manners, and formation into communities by themselves. He bids them claim all their rights, not forgetting the right of suffrage. Canadian, and more particularly West Indian Colonisation, is strongly urged. He thinks that many slaveholders would be induced to emancipate, if their slaves could immediately emigrate to a prosperous and independent community of blacks. The recently proposed plan of Colonization by the authorities of Jamaica, however, is not countenanced.

Mr. Mann concludes: "Seek for wealth as a means of education, advancement and influence, build yourselves up as far as possible into a condition of independence, let your hearts be penetrated with the moral and religious fervour which belong to a great and holy cause, and may God bless your endeavours."

The Hall of the Convention was crowded throughout the day. The principal subject of debate was the propriety of a resolution condemning the action of the Church in so far as it upheld Slavery. The general tone of the Convention is religious, and there is a general indisposition to become obnoxious to a charge of infidelity.

In the afternoon the Committee on "Emigration" reported adversely to the scheme of the American Colonisation Society, but strongly in favour of emigration to some point on the American Continent.

A letter was received from Cassius M. Clay, from which the following is an extract:

"For my part, much as I sympathise with Hungary and her noble sons, I have just as much heart for the wrongs of Africa and her sons? I care nothing for that "right" which regards caste—nothing for that philanthropy which extends not to all climes and colours. I have no faith in the permanent inferiority of nations. Virtue, patience, energy, self-denial, and an eternal purpose to improve, may place the African where the Saxon now is! While the opposite vices may degrade the Saxon below the African—I avoid no responsibility—my advice shall be given as freely as it is asked. So far as morals are concerned, you will find the best guide in the Christian teaching. So far as *social interests* are concerned, you have a long probation before you. So long as the Slavery of your race exists, I regard social equality, even in the Free States, as impossible. But as Burns has it, 'A man's a man for a' that' I would advise universal education, as the first desideratum, rigid economy in dress and all luxuries.

"The blacks should get money. Let them go into trade, become farmers, manufacturers, when capital and employments are lacking, let them combine and thus reduce the expense of living, and increase the productive power. With regard to "political rights" you must bide your time. The best road to political elevation lies through the road of industry and self-respect; which will at last wear us into a generous magnanimity. Above all, let me, who am regarded (unjustly though it be), as a man of blood urge upon you obedience to the laws. After a while, if your oppressors do not knock off your chains, you will outgrow them! And may God defend the right!"

——THE COLOURED PEOPLE AND THEIR ADVOCATES.—The following correspondence (says the *Boston Commonwealth*) will be read with pleasure, as another

Miscellany.

THE BAKER POET AND THE ARENA AT NISMES.

BY ALEXANDER DUMAS.

THERE was one thing at Nismes I was even more anxious to see than its monuments, this was its poet. I had a letter from Baron Taylor to him, with this singular address: "N. Reboul. Poet and Baker." Some of his verses which I had read appeared to be very good. On arriving in the chief town of the Gard, on my first visit to Reboul, a young man whom I met as I left the hotel, and of whom I enquired the way, not only pointed it out, but pleased at the curiosity of a stranger, offered to show me the house.

Before reaching our journey's end we passed the Arena. I turned my head the other way so that the Roman colossus, which was to have its turn, should not attract either my eyes or my thoughts.

"We are passing the Arena," said my guide.

"Thank you, I do not see it," I replied.

Fifty steps further he stopped at the corner of a little street.

"That is where Reboul lives."

"A thousand thanks. Do you know if I am likely to find him at home at this time?"

My guide inclined his head so as to get a side look through the half open door.

"He is in the shop," replied he, and went away.

I remained a moment thinking, with my letter in my hand. In my reception by this man, which would be most clearly shown? his natural disposition, or his social position? Would he talk to me of poetry or flour, the academy or agriculture, publishing or the harvest? I knew that I should find him a great man, but would his manner be unaffected? I entered.

"It is M. Reboul I have the honour of addressing?"

"Himself."

"A letter from Taylor."

"What is he doing?"

"He pursues the artistic mission he has undertaken. You know he is one of those who, devoted to a search for the beautiful, pass their lives in acquiring greater glory for their country and their friends, without finding that they wear out their health and fortune in the service of others."

"You are quite right." And he began to read the letter I had presented to him.

I examined him during this time; he was a man of from thirty-three to thirty-five years of age, above the middle size, with an almost Arabian complexion, glossy, thick hair, and teeth of ivory.

On coming to my name he looked from the letter to me, and I then perceived he had magnificent eyes, as powerful and soft as those of an Indian, made to express love and passion.

"Sir," said he, "I am under great obligations to Baron Taylor, and do not know how I shall be able to thank him sufficiently." I bowed in my turn. "But," continued he, "will you permit me to be candid with you?"

"I hope you will be so."

You come to see the poet, and not the baker, I suppose? I am a baker from five o'clock in the morning till four in the afternoon; from four till midnight I am a poet. Do you want any rolls? I can give you some very good ones. Do you want verses? Come back at five and I will give you some very bad ones."

"I will come back at five!"

"Mary!" (As he spoke two or three customers came in.) "You see," said he, "we should not have had an instant." He served them, and at the same time the door of the bakehouse opened, and a man came in.

"The oven is heated!"

"Send Mary into the shop: I have called her, but she did not hear me. I shall see to the baking myself!" A middle-aged woman came to take his place at the counter. "I shall see you at five," said he to me.

"I shall not fail!" And he went to bake his bread.

I left, meditating on this mixture of simplicity and poetry. Was this mannerism or nature? Did this man play a part, or did he simply follow the two-fold nature of his organization? This I was about to learn.

I walked about during the three hours which elapsed between the first and second interviews. I do not well know what I saw. I mused on the present state of society. The people, from whom every thing has proceeded for the last fifty years, after having given France soldiers, tribunes, and marshals, was now to furnish it with poets. The eye of the Omnipotent had penetrated into the depths of France; the people had their Lamartine.

I came back at the time appointed. Reboul was waiting for me at a little side door. His shop, which was still open, was left to the care of the woman who had taken his place in the morning, and he came forward to meet me. He had changed his dress; the one he wore was extremely simple but very neat, something between that of the people and the middle class.

We ascended a little winding staircase, and came to the entrance of a loft, on the floor of which were piled up in separate heaps different sorts of cheese. We turned down one of the little valleys which these mountains of food left between them, and ten steps brought us to the door of the room.

"Here," said Reboul, closing it behind us, "we are separate from the world of realities; now for the world of illusions. This is the sanctuary; prayer, inspiration, and poetry alone have the right to enter it. In this room, plain as you see it, I have passed the most pleasant hours of my life, those in which I write and reflect."

The room had an almost monastic simplicity; the curtains of the bed and windows were white, while some rush-bottomed chairs and a walnut wood bureau composed the whole of the furniture. The library consisted of two volumes, the Bible and Corneille. "I begin," said I, "to understand your two lives, which till now appeared incomprehensible."

"There is nothing more simple," replied Reboul, "and the one assists the other; while the arms work the head is at rest, and while the head works the the arms are at rest."

"Excuse what I am going to ask."

"Go on."

"Are you of a good family?"

"I am the son of a workman."

"At least, you have received some education?"

"None!"

"What made you a poet?"

"Misfortune!"

I looked around me; everything seemed so calm, so quiet, so happy in this little room, that the word misfortune seemed to have no echo there.

"You are trying to find some explanation of what I have just said, are you not?" continued Reboul.

"And I acknowledge I can find none."

"Have you never passed over a tomb without knowing it?"

"Yes, indeed! But the grass was greener and the flower there sweeter."

"It was so with me. I married a woman that I loved; my wife is dead."

I stretched out my hand. He continued.

"I was in great grief, for which I vainly sought some alleviation. I had mixed hitherto only with men of my own class; gentle and compassionate, but vulgar-minded. Instead of saying to me, 'Weep, and we will weep with you,' they tried to console me; the tears which I longed to shed flowed back to my heart and deluged it. I sought solitude, and finding no one who could understand me, poured forth my grief to the Almighty. My lonely and religious lamentations took a poetical and elevated character, which I had never remarked in my words. My thoughts were expressed in an idiom new even to myself; and as they turned to heaven, finding no sympathy on earth, the Lord gave them wings and they ascended toward him."

"Yes: it is so," said I, as if he had been explaining the simplest things in the world, "and I understand it now. It is thus that true poets become so. How many men of talent only want a great misfortune to become men of genius! You have told me in one word the secret of your whole life; I know it now as well as you do."

"To my private sorrows public grief was added. Think of the poet who sees falling around him, like October leaves, all religious faith, all political conviction; and who is left like a tree stripped of its foliage to wait for a spring which may perhaps never come. You are not a Royalist, I know; therefore I will not speak to you of your old monarchy, turned off like a discharged servant. But you are religious. Imagine, then, what it must be to see the holy images before which, as a child, your mother led you to pray, cast down, trampled under the hoofs of horses, drawn through the mud, imagine what it must be to see such things in Nismes, in this old city, full of civil discord; where everything speaks of hatred; where blood flows so quickly and so long. Oh! had I not had poetry to complain in, and religion to console me, my God! what would have become of me?"

"Believe me, we have all seen similar things; and in consequence, at the hour of need every poet will be the friend of order. The domain of poetry has been increased by the field of politics; revolutions have ploughed it with the sword—our fathers have fertilized it with blood; let us sow the seed and faith will grow again."

"You have an entire kingdom in the stage; for me, I have but a garden. But never mind, I will cultivate flowers and wreathe them into a crown which shall be thrown to you."

"You did not come here to make me compliments, but to give me some verses."

"Do you really wish it? or do you only ask from curiosity and politeness?"

"I thought we knew each other too well for such questions to be necessary to either."

"You are right? I am ready. When I tire you, you have only bid me stop."

He commenced. I remarked in his voice, from the very first, the intonation which belongs peculiarly to the modern school—the same style which so often struck me in De Vigny, in Lamartine, and in Hugo: and yet, at this period, Reboul knew none of them. This proved to me a thing I had long suspected, there is a melody which is quite absent from the poetry of the old school. While he was speaking I watched him; his countenance had assumed a new expression, that of faith. An earnest internal conviction was displayed on the exterior, as he read on, and according to what he read.

We passed four hours in this way; he poured out a flood of poetry, and I constantly asking for more. I did not spare a single drawer of his bureau; every thing was brought out, manuscripts, papers, loose leaves, and at last I pointed to a rough copy of some thing.

"That," said he, "you shall read yourself, to-morrow."

"Why so!"

"Because it is some verses addressed to you. I scrawled them whilst I was waiting for you. Now let us go and see the Arena; in doing so we shall but change the style of poetry, only I reserved the best to the last."

Reboul's house was, as I have said, near the Arena, and the first street we took brought us opposite to it. It was the first great Roman monument I had seen since the Arch of Triumph and theatre at Orange. We went around it at the ordinary pace of men who converse while they walk, and this took us nearly a quarter of an hour, at the end of which time we were again at the entrance. Reboul made himself known to the porter, and though the hour for visiting it was past, Reboul, as a townsman and neighbour, obtained admission. Five francs, which I slipped into the hand of this modern Janitor, placed me so high in opinion, that he easily granted my request to remain even after Reboul (whom I could not decently ask to pass the night in the open air) should be gone. However, he insisted on accompanying me in my first visit to the interior; so we began inside and under the lower gallery the same circular promenade we had just made outside, then we went to the upper gallery, and from thence into the circus.

It is impossible to form an idea of the effect produced by the gigantic ruin when seen by moonlight. Certainly, Italy has grander remains, and the proportions of the Circus of Titus are still more colossal that in than of Antonius, but you come to them by gradations which prepare you for the spectacle you are about to behold: to reach them you have to pass by the Theatre of Agrippa, the ruins of the Capitol, and the Arch of Titus. Besides, it is Rome, the city of great men and great things; but at Nismes, in the centre of our modern France, where no indication prepares us for the sight of these wonderful remains of a forgotten civilization, the giant's skeleton surpasses all the powers of the mind, all the limits of imagination, all the proportions of thought.

Reboul easily perceived the effect produced on me by this sight. "You want nobody now," said he; "all I could say to you would not be worth these ruins, I leave you with the spectre of a world—interrogate it."

I gave him my hand, and motioned him to withdraw. He went away, and I heard his steps resounding some time in the depths of the ampitheatre, then become fainter, then die away, and I stood alone in the solitude.

The night was fine, though rather cloudy; the moon, which was at its full, pierced through the transparent atmosphere of the south, which its cold, pale rays sufficed to lighten up. It was like a northern twilight. From time to time the wind blew in gusts, swelled, through the galleries, sounded like the flapping of an eagle's wings, and escaped through the openings which the hand of man or the foot of Time have made in the venerable edifice. There was something indistinct in the sound which froze the soul and made the body tremble; at one time you might have imagined it the roaring of the wild beasts, at another the groans of the gladiators. Sometimes a large cloud passed between the moon and the earth, and a shadow was cast over the Arena like a pall over a coffin; for a time the details were lost in obscurity, then by degress, as if the hand of God raised the shroud, the corpse began again to appear, stretched out and mutilated.

I remained two hours thus re-constructing in my mind the monument, and the company which filled it. All the places which had been occupied by the great Roman nation were visible and could be repeopled. The four first rows beginning from the ground were reserved for the principal persons of the colony, the seats were separated, and each noble family had its own marked with its name. At the northern door still stood the consular estrade, and at the southern that of the priestesses. Above them two black arches marked the recesses into which in case of rain, those retired who held their privileges from religion or Cæsar. The ten following rows, separated from the first four by a wall, were reserved for the knights, who had egress and ingress by fourty-four passages; ten other rows were reserved for the citizens, who reached them through thirty entrances; and the populace and slaves crowning this huge reversed pyramid, stood in crowds against the upper wall, in which were fixed the posts which supported the *Velarium*.

On holidays, that is to say, when blood was to flow, 30,000 spectators filled the seats, stopped up the entrances, and even clung to the beams; but it sometimes happened that as the man and the beast were beginning to fight, a passing storm would burst in rain and lightning over the ampitheatre. Then the gladiator was sent back to his prison and the lion to his den; the 30,000 spectators rose spontaneously, and went into the galleries. The rain had then but the stones to pelt, and the building might have been deemed empty but for the buzzing of the people under the arcades, like that of bees in their hives. Meanwhile the animal licked his wounds, and the man staunched his blood; but as soon as a ray of sunshine appeared to dry the seats, which were arranged in a slanting manner to allow the water to run off, and the sand had drunk in the rain, the counsel reappeared at his place, and the 30,000 spectators reentered by a hundred openings, spread themselves again round the circle, resumed the seats they had quitted for a short time, and the iron bars of the arena again opened to admit the lion and the gladiator.

The place in which I was sitting happened to be one of the best preserved in the ampitheatre. At my feet twelve or fifteen steps conducted, in unbroken succession to the ground. I went down this gigantic staircase, the upper steps of which are fifteen hundred feet in circumference, and reached the Arena itself; on either side, facing each other, are still seen the two doors through which the combatants entered.

At the time of the barbaric invasions, the Visigoths found the ampitheatre, which was then only three centuries old, in perfect preservation; they converted it into a citadel, and in consequence of its new destination flanked the eastern gate with two towers, which remained standing till 1809. The Saracenes, after being beat by Charles Martel, took refuge in their turn within its walls; the conqueror pursued them, and all the outer side of the colossus still bears the mark of the flames which were lighted by the besiegers. The barbarians being expelled, a garrison was left in the ancient fortress, and gave rise to the Association of the Arena, composed of knights who were bound by an oath to defend it till death. These knights were, in their turn, driven out by a movement of the commons, and the people, who succeed to every thing, founded a colony within the walls of the amphitheatre, which was in existence in 1810, composed of three hundred houses inhabited by two thousand people.

I do not know when I should have quitted these magnificent ruins if I had not heard three in the morning strike; when I thought it was time to leave them. I then awoke the gate-keeper, and, with some trouble, got back to my hotel.

FROM a Lecture before the Mechanics' Society of this city, by Charles King, and which has been published in the *Tribune*, we take the following history of the first attempts to use Steam as a locomotive power in this country:

EARLY DAYS OF STEAM NAVIGATION.

But I am running ahead of my subject. Let us get back to 1806, from which dates the era of steam applied to navigation, and the great discovery—for the successful application of a known force in a new manner, and to new and before unthought-of purposes, may justly be styled a discovery—belongs to our City, of which Fulton was a resident, and from which the first boat—the Clermont—started for Albany on the 7th day of August, 1807. An hour might be readily occupied with a recital of the hopes and the fears, the almost angry doubts and passionate sneers, with which the announcement was received that a boat without sails or oars was to be forced up the Hudson to Albany, against wind and tide, in a shorter time than was ever dreamed of, and all by the vapour which the housewife's tea-pot sends curling into the air, to vanish in an instant from sight. For, at that time, steam engines, as applied to the various processes of manufacturing or other industry on land, were little known generally, and the whole United States furnished but one machine-shop or foundry where a steam-engine could be made, and that was opposite to this City, at Hoboken, in the works of Col. Stevens, of whom—more anon.

But the Clermont, in the sight of a jeering rather than encouraging crowd, got under way, and slowly, very slowly, as we now estimate speed, forged ahead. Robert Fulton and a few chosen friends and faithful mechanics only on board—for he refused to take passengers generally, only consenting, after much solicitation, to take six, of whom the late Selah Strong was one, and perhaps the first man who ever paid for a steamboat passage up the Hudson.

In 32 hours, running time, after stopping one night at the seat of R. R. Livingston, the Clermont made her appearance at Albany, having received in her fiery track along the river abundant manifestations of interest, astonishment, and even terror—and thereby securing the monopoly promised by act of the Legislature to any persons who should accomplish the distance by steam between Albany and New York within 36 hours. The return trip was made in 30 continuous hours, averaging five miles an hour. The engine of this boat was made in the workshops of the famous Watt, at Birmingham.

It is a memorable proof of how little was then anticipated from this great discovery, that the chief commercial newspaper of that day (*Lang's Gazette*) makes no allusion whatever to the great event, as now we must call it; and that, out of five or six daily papers published in the City, one only (*The American Citizen*, edited by an Englishman—Cheetham) referred to the vessel when about to take her departure, and published on her return the short and modest letter in which Robert Fulton related the occurrences and result of the trip. Yet in the columns of these same papers abundant space was given up to party recriminations and the fleeting and perishable interests and questions of the day. Even Fulton himself was far from seeing the full value of his discovery, for the scope of his original plan was apparently to stem the current of the Mississippi and similar rivers, and thus supersede the painful and tedious ascending navigation of those rivers by poles and drag lines, with his steam.

PROGRESS OF RIVER STEAMERS.

The palm thus gained by Fulton was closely contested by John Stevens, of Hoboken, who, long in concert with R. R. Livingston and Robert Fulton, had made experiments in steam as a means of propulsion, but now, aided by the genius and practical mechanical skill of his son R. L. Stevens, was operating separately. Almost simultaneously, but yet *behind* by that *fatal* quarter of an hour which determines the fate of so many enterprises, and of so many human beings, both men and women, Mr Stevens produced, independently of Fulton's plans and experiments, his steamboat Phœnix; but, precluded by the monopoly which Fulton's success had obtained for him of the waters of New York, Mr Stevens first employed her as a passage boat between this City and New Brunswick, and finally conceived the bold purpose of sending her round to Philadelphia by sea; and he executed it successfully. His son, Robert L. Stevens, went round with the boat in the month of June, 1808. A fierce storm overtook them. A schooner in company was driven out to sea, and was absent many days, but the Phœnix made a safe harbour at Barnegat, whence, when the storm abated, she proceeded safely to Philadelphia, and plied many years between that city and Trenton. Mr. Stevens thus earned indisputably the honour of first venturing and succeeding to encounter the might of the ocean with a steam-propelled vessel. When the Phœnix went round to Philadelphia, the Atlantic, and no other sea, had ever known the domination of victorious steam. Even now, when our magnificent steamers, exceeding in dimensions line-of-battle ships, go and come with the regularity of mail-coaches on a beaten turnpike road, this first daring conception of trusting to the ocean a frail craft, with nothing but steam for her means of safety and progress, may recall the lines of the Roman lyrist:

Illi robor et æs triplex
Circa pectus erat, qui fragilem truci
Commisit pelago ratem.

Cased was his breast in triple brass and oak,
Who first old Ocean's storm-tossed surface broke
With his frail bark.

From these beginnings, the progress of steam, and the prodigious acceleration of speed now obtained, would afford most gratifying details for examination, if our time and proper scope allowed. But me must—almost as if steam-driven—hurry on.

The limit, the utmost limit of speed, to which Fulton hoped or thought it possible to attain, was nine miles an hour, and that he, in later boats, accomplished; but it was again reserved for the name of Stevens, in the person of Robert L. Stevens, after long and numerous experiments cautiously conducted and tested, as to the form of vessel best calculated to overcome the resistance of the dense medium through which it was to make its way, to send forth on the Hudson—the monopoly law of the State of New York having meanwhile been overruled by the Constitution of the United States—a boat as superior in size and equipments, as in speed, to all before it, and to travel at the rate of 13 1-2 miles per hour. Even that is now slow, and the 150 miles which separate us from Albany are passed over by steamboats—not one, but many—in eight or nine hours; and the actual rate of nineteen and even twenty miles has been attained by some of the later boats. But when the New Philadelphia, R. L. Stevens' boat, in 1814, started forth, at the rate of 13 1-2 miles per hour, even the senses were distrusted, philosophy, which had calculated only the resistances of the medium to the forms then usual, was at fault, and what had been actually done was pronounced impossible. But the steady, far-reaching mind of the younger Stevens knew the secret of his success—that it was due to the form he had given to his vessel. He saw, too, after some trips, that even that form was far from the perfection he had designed, and accordingly he went to Brown & Bell, then, and even yet, I believe, eminent ship builders, and begged them to put on the New Philadelphia a long, sharp false bow, of which he gave them the drawings. After considering the proposition, they declined, declaring themselves unwilling to encounter the ridicule of what struck them as so unseemly a work, and Mr. Bell added that it would be called Bell's nose, and would be the general laughing-stock. Repulsed, but not disconcerted, young Stevens, sure of his own conclusions, built a false bow at his own shop, put it on, and obtained in consequence an additional speed of several miles the hour. With the New Philadelphia commenced the first day line to Albany. This was the commencement of the new models, which, alike in clipper steamers and in clipper ships, have given to both classes of our build and navigation—for there is a great deal, too, in the latter—our superiority over the world.

EARLY PATRONS OF STEAM NAVIGATION.

And here let me expatiate a little upon the service to the Mechanic Arts, and consequently to the welfare of humanity, of the family of Stevens, resident during the half century among us. We have seen that by the lucky quarter of an hour, Fulton carried away from Stevens the prize of the first successful steamboat. But years before, viz. 1804, Col. Stevens, whose fertile and ingenious mind was specially turned to mechanical inventions, had constructed and put into operation a steamboat of which the motive power was a propeller, *the* propellor which at this day I believe is admitted in form and proportion to be the best. This boat was a small one. In it Col. Stevens put an engine with tubular boilers, the first ever made, now universal in locomotives. The machinery, made under his own direction and in his own shop at Hoboken, set in motion two propellers of five feet diameter each, and each furnished with four blades having the proper twist—to obtain which he had the greatest difficulty with his workmen—and set at an angle of about 35 degrees. This vessel—used only for testing the possibility of steam-navigation—so completely demonstrated the fact that Col. Stevens applied it on a larger scale in 1806, to a pirogue, 50 feet long, 12 wide, 7 deep—which attained very considerable speed. Encouraged thereby, he commenced the Phœnix with side-wheels, to whose success allusion has already been made. It is proof of the remarkable accuracy and mechanical skill of the Hoboken workshop, that the engine of the first small propeller, carefully preserved, was set up again not more than 10 or 12 years ago, in a new vessel, and, without altering a screw, worked most successfully. The old hull and the blades of the propeller are yet in existence at Hoboken.

STEAM FERRIES.

Not the least useful purpose to which steam was applied about those times, was to the ferry-boats, which dart at all hours across the rivers, separating at once from, and binding us to, the shores opposite our Island. The noble estuaries which constitute our City so emphatically *The Bride of the Seas*, too precious for, and too constantly vexed by, the keels of commerce to admit of bridges as means of connection, would really have isolated us from the regions around, but for the happy and timely application of steam to navigation. I address many, doubtless, who remember the comfortless row-boats, or the more comfortless pirogues, which alone, until after the year 1810, afforded the means of crossing man or beast to Long Island or to Jersey City. The first step in advance was the introduction of horse-boats—twin-boats, with the wheel in the centre—set in motion by a sort of horizontal tread-mill wheel on which horses were made to step. For horses, steam was substituted; first by Fulton at the Fulton Ferry. Then came the single boats, with side-wheels, and propelled by steam, of which the first was the Hoboken, by R. L. Stevens, in 1822. She still is at work, much enlarged and sound as ever, and much faster than at first. As indispensable to the new ferry-boats, came—of Fulton's devising—the floating bridges at the ferries which rise and fall with the tide, aided by counterbalancing weights on shore; an invention ingenious in itself, and, as I have said, the indispensable complements of steam ferry-boats. The spring piles now used to deaden the force of the blow as the boat approaches the ferry, and to direct her course aright, are due to Robt. L. Stevens, who introduced them in 1822.

OCEAN STEAMERS.

And here I must record, though I cannot enter into any details, that as we were the first to witness the success of river steamers, so were we to originate ocean steamers. In the year 1818, the Savannah, a New York built ship, with side-wheels and propelled by steam and sails, went hence to Petersburgh via Liverpool and returned safely; and a year later, the Robert Fulton, built by Henry Eckford, under the superintendence of Jasper Lynch, for David Dunham, plied as a steam-packet between this City and New Orleans, but, the business not paying, her engines were taken out and she was sold to the Brazilian Government as a ship-of-war, being of 700 tuns. I have here a memorial of this ship, as it were from the grave. [The lecturer here unrolled and exhibited to the audience a coloured drawing of the Robert Fulton, made in 1821—deposited under one of the marble columns erected that year in the South entrance of the Park, and disinterred, uninjured, in 1848, when these columns were removed.]

STEAM ON THE LAND.

Next in succession among the operative causes of our growth, as connected with steam, was its application to land carriage, and soon the railroad and the locomotive were constructed to soothe and to satisfy, so far as that *can* be done, our national go-ahead spirit. And here again New York was the point whence proceeded the first railroad enterprise, which was to connect this City with Philadelphia, by the Camden and Amboy Railroad, in 1831; and here again Col. John Stevens claims our admiration and gratitude. He had clearly worked out in his own mind, long before any locomotive was constructed in Europe, the theory of such an application of steam and the actual form in which it could be advantageously made, as well as the cost of constructing and working a railway for the use of locomotives. Long before any experience existed to justify his anticipation, he said and published that there was no limit to the speed of a locomotive on a rail, but the strength of the materials; that it might easily be made to run as fast as a pigeon could fly; and it is one of the striking incidents connected with the opening, or the early use of the Camden and Amboy Railway, that a flock of pigeons which had settled on the track, being disturbed in its approach by the rapid engine, took wing in the direction of the track, and that one of them, attempting to cross in front of the car, was struck down by it, thus most literally verifying the prediction that the locomotive would equal in velocity the pigeon's flight.

EFFECT OF RAILWAYS UPON THE CITY.

Since that first road, the number has multiplied in all direction, and such are the relations and the functions of this great City to all other parts of the Union, that, make a railroad or open a canal where you will, it must seek a connection with us, as the root of the plant will seek and find the water, in whatever direction and at whatever distance. The number of passengers and the weight and value of merchandise and produce now poured daily into our streets by the railroads from the North and the South, the East and the West, which terminate directly here, are inestimable, and every pursuit and calling is interested in their success. Who, before the Erie Railroad became a reality, ever heard of *tons* of strawberries, the daily measure of the quantity of that delicate fruit thus brought in the season to our market; or gallons of milk reckoned by the ten thousand, the daily produce of hundreds of farms and tens of hundreds of cows, almost warm from the milking, and innocent in a great degree of the "purling brook?" And so of butter, vegetables, poultry, eggs and all the riches of the dairy and the farm-yard, and the orchard and the garden. Think of such an incident, which only steamboats and railroads could bring about by bringing distant parts into connection with the metropolis, as that which occurred in our bay the summer before last, when the Amboy steamboat, laden on her decks and guards with baskets of peaches, then almost a drug from their abundance, passed alongside of an emigrant ship from Norway, loaded with passengers. As the vessels kept side by side for a while, and the numerous women and children looked forth wishfully upon these baskets laden with what might seem to them the golden fruit of the Hesperides—fruit which no one of them possibly had ever tasted, for they were from a region too cold for its growth—some kind-hearted person on the steamboat began to toss peaches on board the emigrant ship, and the delight with which they were caught and eaten by the emigrants was so genuine, that some dozens of hands were soon occupied in like manner on board the steamboat, and, for the brief time that the vessels were abreast, a steady shower of peaches fell upon the emigrant deck. What a notion must such an accidental reception have imparted to them of the country that was to be their future home.

EARLY LOCOMOTIVES.

The locomotives first used on the Camden and Amboy Railroad were made or constructed by Robt. Stevens, at his works, or upon his models in England, differing essentially from those in use in England. At the outset he applied a spark-catcher, though patents for like contrivances have since been taken out, and he invented and applied then, and has continued ever since; and other railways have adopted the contrivance of the guide, or cow-catcher, as it is commonly called from an incidental function it discharges, of which the wheels, easily following the curves, give a direction to the forward wheels of the locomotive, fixed on an axle slightly moveable, as with the forward pair of carriage wheels, and thus enable it, without danger of flying off a tangent, to diverge from its straight, onward, rapid course.

The invention of the T rail, which renders travelling so secure, is also due to R. L. Stevens. He went to England with the model, presented it to the engineers and iron-masters, and begged they would make him rails on that pattern, but all declined, saying that they had no machinery which could do it. He persisted, and finally obtained from Mr. Guest, a member of Parliament, and a great iron-master, an order to use his furnaces in Wales. Mr. Stevens posted thither, wrought with his own hands at the work, but at the moment of success the machinery gave way, and he was obliged to return to London. Yet undismayed, and abating no jot of hope, he asked permission, after paying himself the expenses of repairing the damage to the machinery, to try again. It was given; he did try, and succeeded, and gave to the world, taking no patent, that form of rail now universal on every secure road. So much for an American mechanic.

Beauty without virtue is a flower without perfume. Value a good conscience more than praise.

Dickens' Christmas Story.

WHAT CHRISTMAS IS, AS WE GROW OLDER.

BY CHARLES DICKENS.

[The *London News* says of the following, that it is one of the tenderest and most pathetic fancies Dickens has ever given forth].

Time was, with most of us, when Christmas Day encircling all our limited world like a magic ring, left nothing out for us to miss or seek; bound together all our home enjoyments, affections, and hopes; grouped every thing and every one around the Christmas fire; and made the little picture shining in our bright young eyes, complete.

Time came, perhaps, all so soon! when our thoughts overleaped that narrow boundary; when there was some one (very dear, we thought then, very beautiful, and absolutely perfect) wanting to the fulness of our happiness; when we were wanting too (or we thought so, which did just as well) at the Christmas hearth by which that some one sat; and when we intertwined with every wreath and garland of our life that some one's name.

That was the time for the bright visionary Christmases which have long arisen from us to shew faintly, after summer rain, in the palest edges of the rainbow! That was the time for the beatified enjoyment of the things that were to be, and never were, and yet the things that were so real in our resolute hope that it would be hard to say, now, what realities achieved since, have been stronger!

What! Did that Christmas never really come when we and the priceless pearl who was our young choice were received, after the happiest of totally impossible marriages, by the two united families previously at daggers-drawn on our account? When brothers and sisters in law who had always been rather cool to us before our relationship was effected, perfectly doted on us, and when fathers and mothers overwhelmed us with unlimited incomes? Was that Christmas dinner never really eaten, after which we arose, and generously and eloquently rendered honour to our late rival, present in the company, then and there exchanging friendship and forgiveness, and founding an attachment, not to be surpassed in Greek or Roman story, which subsisted until death? Has that same rival long ceased to care for that same priceless pearl, and married for money, and become usurious? Above all, do we really know, now, that we should probably have been miserable if we had won and worn the pearl, and that we are better without her?

That Christmas when we had recently achieved so much fame; when we had been carried in triumph somewhere, for doing something great and good; when we had won an honoured and ennobled name, and arrived and were received at home in a shower of tears of joy; is it possible that *that* Christmas has not come yet?

And is our life here, at the best, so constituted that, pausing as we advance at such a noticeable mile-stone in the track as this great birthday, we look back on the things that never were, as naturally and full as gravely as on the things that have been and are gone, or have been and still are? If it be so, and so it seems to be, must we come to the conclusion, that life is little better than a dream, and little worth the loves and strivings that we crowd into it?

No! Far be such miscalled philosophy from us, dear reader, on Christmas Day! Nearer and closer to our hearts be the Christmas spirit, which is the spirit of active usefulness, perseverance, cheerful discharge of duty, kindness, and forbearance! It is in the last virtues especially, that we are, or should be, strengthened by the unaccomplished visions of our youth; for, who shall say that they are not our teachers to deal gently even with the impalpable nothings of the earth!

Therefore, as we grow older, let us be more thankful that the circle of our Christmas associations and of the lessons that they bring, expands! Let us welcome every one of them, and summon them to take their places by the Christmas hearth.

Welcome, old aspirations, glittering creatures of an ardent fancy, to your places underneath the holly! We know you, and have not outlived you yet. Welcome old projects and old loves, however fleeting, to your nooks among the steadier lights that burn around us. Welcome, all that was ever real to our hearts; and for the earnestness that made you real, thanks to Heaven! Do we build no Christmas castles in the clouds now? Let our thoughts, fluttering like butterflies among these flowers of children, bear witness!

Before this boy, there stretches out a future, brighter than we ever looked on in our old romantic time, but bright with honour and with truth. Around this little head on which the sunny curls lie heaped, the graces sport, as prettily, as airily, as when there was no scythe within the reach of time to shear away the curls of our first love. Upon another girl's face near it—placid but smiling bright—a quiet and contented little face, we see home fairly written.

Shining from the word, as rays shine from a star, we see how, when our graves are old, other hopes than ours are young, other hearts than our are moved; how other ways are smoothed; how other happiness blooms, ripens, and decays—no, not decays, for other homes and other bands of children, not yet in being nor for ages yet to be, arise, and bloom and ripen to the end of all!

Welcome, everything! Welcome, alike what has been, and what never was, and what we hope may be, to your shelter underneath the holly, to your places round the Christmas fire, where what is sits openhearted! In yonder shadow do we see, obtruding furtively upon the blaze, an enemy's face! By Christmas day, we do forgive him! If the injury he has done us may admit of such companionship, let him come here and take his place. If otherwise, unhappily, let him go hence, assured that we will never injure nor accuse him.

On this day, we shut out Nothing!

"Pause," says a low voice. "Nothing? Think!"

"On Christmas Day, we will shut out from our fireside, Nothing."

"Not the shadow of a vast City where the withered leaves are lying deep?" the voice replies. "Not the shadow that darkens the whole globe? Not the shadow of the City of the Dead?"

Not even that. Of all days in the year, we will turn our faces towards that City upon Christmas Day, and from its silent hosts bring those we loved, among us. City of the Dead, in the blessed name wherein we are gathered together at this time, and in the Presence that is here among us according to the promise, we will receive, and not dismiss, thy people who are dear to us!

Yes. We can look upon these children angels that alight, so solemnly, so beautifully, among the living children by the fire, and can bear to think how they departed from us. Entertaining angels unawares, as the Patriarchs did, the playful children are unconscious of their guests; but we can see them—can see a radiant arm around one favourite neck, as if there were a tempting of that child away.

Among the celestial figures there is one, a poor mis-shapen boy on earth, of a glorious beauty now, of whom his dying mother said it grieved her much to leave him here, alone, for so many years as it was likely would elapse before he came to her—being such a little child. But he went quickly, and was laid upon her breast, and in her hand she leads him.

There was a gallant boy, who fell, far away, upon a burning sand beneath a burning sun, and said, "Tell them at home, with my last love, how much I could have wished to kiss them once, but that I died contented and had done my duty!" Or there was another, over whom they read the words, "Therefore we commit his body to the dark!" and so consigned him to the lonely ocean and sailed on. Or there was another who lay down to his rest in the dark shadow of great forests, and, on earth, awoke no more. O shall they not, from sand and sea and forest, be brought home at such a time!

There was a dear girl—almost a women—never to be one—who made a mourning Christmas in a house of joy, and went her trackless way to the silent City. Do we recollect her, worn out, faintly whispering what could not be heard, and falling into that last sleep for weariness? O look upon her now! O look upon her beauty, her serenity, her changeless youth, her happiness! The daughter of Jarius was recalled to life, to die; but she, more blest has heard the same voice, saying unto her, "Arise for ever!"

We had a friend who was our friend from early days, with whom we often pictured the changes that were to come upon our lives, and merrily imagined how we would speak, and walk, and think, and talk, when we came to be old. His destined habitation in the City of the Dead received him in his prime. Shall he be shut out from our Christmas remembrance? Would his love have so excluded us? Lost friend, lost child, lost parent, sister, brother, husband, wife, we will not so discard you! You shall hold your cherished places in our Christmas hearts, and by our Christmas fires; and in the season of immortal hope, and on the birthday of immortal mercy, we will shut out nothing!

The winter sun goes down over town and village; on the sea it makes a rosy path, as if the sacred tread were fresh upon the water. A few more moments, and it sinks, and night comes on, and lights begin to sparkle in the prospect. On the hill-side beyond the shapelessly-diffused town, and in the quiet keeping of the trees that gird the village-steeple, remembrances are cut in stone, planted in common flowers, growing in grass, entwined with lowly brambles around many a mound of earth.

In town and village, there are doors and windows closed against the weather, there are flaming logs heaped high, there are joyful faces, there is healthy music of voices. Be all ungentleness and harm excluded from the temples of the household goods, but be those remembrances admitted with tender encouragement! They are of the time and all its comforting and peaceful reassurances: and of the history that re-united even upon earth the living and the dead; and of the broad beneficence and goodness that too many men have tried to tear to narrow shreds.

Gleanings from Foreign Publications.

THE prisons in the Roman States, (says the London *Weekly News*), continue to be crowded, and are generally considered to be in a shocking condition. An English gentleman of high respectability, who has seen those of Spoleto, is said to have found one hundred and seventy-five prisoners in one room, in chains, and in a state of wretchedness horrible to witness.

—— AMERICA VINDICATED BY THE "GREEK SLAVE."—

'Tis false that in that Show of ours,
America's not shown her powers;
For in the Crystal Palace nave
She shows her POWERS by—a Slave.

—*From Albert Smith's new periodical "The Month."*

—— WE were right, (says the London *Weekly News*), in stating that the document purporting to be a diplomatic note addressed to Mr. Webster by Chevalier Hulseman, Austrian Chargé d'Affaires at Washington, on the subject of Slavery in the United States, was apocryphal, and the mere invention of an Abolitionist paper. The deception has been officially declared by the Austrian Government, thus spoiling many a good leading article and philanthropic speech.

——"OH! mothers and daughters of England who read Mrs. Ellis," exclaims a Paris correspondent of a London paper, "if I could tell you who and what and of what manner of life are the gentlemen and ladies at the Elysée who represent Religion—family—property. The Princess Demidoff!—The present Ministry may literally be called a *Sinister* Ministry: for M. Bonaparte has two-half brothers in M. de Morny and M. de Maupas: the former a son of General Flaubault and Queen Hortense: the latter of Queen Hortense and I know not whom: for Hortense was prodigal of her Creole blood. The fact is, that Louis Bonaparte is not a Bonaparte at all; it is known that his real father was a Dutch Admiral."

——THE London *Chronicle* thus speaks of the last Presidential Message:

"The American people, that almighty race, whose words drop from them like thunderbolts, and who, if we are to believe themselves, never move, even to flog a nigger or to repudiate a debt, without shaking the spheres, have just now spoken to the trembling universe, in one of those awful Messages which every citizen of the Union supposes the rest of mankind to be waiting for, with as much anxiety as the Israelites displayed when congregated at the foot of Mount Sinai, at the giving of the law."

——"THERE IS NO MISTAKE."—The Duke of Wellington's reply to Mr. Huskisson, "There is no mistake," has become familiar in the mouths of both those who remember the political circumstances that gave rise to it, and those who have received it traditionally, without inquiring into the origin of it. You may, perhaps, think it worthy of a "note" that this was not the first occasion on which the Duke used those celebrated words. The Duke (then Earl of Wellington), in a private letter to Lord Bathurst, dated Flores de Avila, 24th July, 1812, writes in the following easy style: "I hope that you will be pleased with our battle, of which the despatch contains as accurate an account as I can give you. There is no mistake, everything went on as it ought; and there never was an army so beaten in so short a time." The whole letter is well deserving of insertion; but my object is simply to draw attention to the occasion on which the Duke first used the sentence now so well known.—*Notes and Queries.*

——EVERY boy in England is taught to believ